

Cornell Law School Library



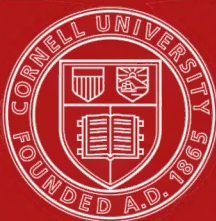
Cornell University Library  
**KF 6584.G55 1919**

**A treatise on the law of inheritance tax**



**3 1924 020 026 070**

law



## Cornell University Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.







**A TREATISE ON THE LAW OF  
INHERITANCE  
TAXATION**

**WITH PRACTICE AND FORMS**

**SECOND EDITION**

**BY**

**LAFAYETTE B. GLEASON**

**Attorney for State Comptroller for New York City**

**AND**

**ALEXANDER OTIS**

**of the New York City Bar**

**(Specialist in Inheritance Taxation)**



**ALBANY and NEW YORK CITY  
MATTHEW BENDER & COMPANY,  
INCORPORATED**

**1919**

*B10805.*

COPYRIGHT, 1917

BY MATTHEW BENDER & COMPANY  
INCORPORATED

---

COPYRIGHT, 1919

BY MATTHEW BENDER & COMPANY  
INCORPORATED

## PREFACE TO SECOND EDITION

---

In submitting the Second Edition of Gleason & Otis on Inheritance Taxation the authors desire to acknowledge the valuable assistance they have received from Mr. William T. Plumb, of Rochester, N. Y., well known as an expert in inheritance tax matters.

The authors also desire to acknowledge assistance rendered and courtesies received from the following:

Hon. Robert A. Waring, Inheritance Tax Attorney for the State of California.

The Tax Commission of Wisconsin.

Hon. W. C. Harrison, Secretary of the State Board of Tax Commissioners for the State of Indiana.

Hon. George E. Wallace, Member of the Tax Commission of the State of North Dakota.

Hon. William T. Kelley, State Supervisor of Transfer Tax Bureau for the State of New Jersey.

Hon. Edward J. Brundage, Attorney General of Illinois.

Hon. Clifford Walker, Attorney General of Georgia.

Hon. O. O. Askren, Attorney General of New Mexico.

Hon. O. B. Fuller, Auditor General, Michigan.

Hon. Charles A. Snyder, Auditor General, State of Pennsylvania.

Hon. Z. W. Bliss, Chairman Rhode Island Tax Commission.

The Tax Commission of Massachusetts.

Hon. Egbert S. Oakley, of the Legal Department, State of Minnesota.

Hon. R. H. Blackman, Assistant Attorney General, Colorado.

Hon. Albert C. Ritchie, Attorney General of Maryland.

Hon. Joseph S. Matthews, Assistant Attorney General,  
New Hampshire.

Hon. W. S. Hallanan, Tax Commissioner, West Virginia.

Hon. Geo. V. Berry, Assistant Attorney General, Mis-  
souri.

Hon. H. C. Preston, Tax Commissioner, South Dakota.

Hon. H. W. Seiler, Assistant Tax Commissioner, Wash-  
ington.

Hon. O. P. Hoff, State Treasurer, Oregon.

Hon. R. D. Miller, Income Tax Auditor, Montana.

Hon. H. B. Terrell, State Comptroller, Texas.

Hon. F. C. Carter, State Auditor, Oklahoma.

Hon. Geo. A. Cole, State Controller, Nevada.

Hon. W. L. Walls, Attorney General, Wyoming.

The Ohio Tax Commission.

Hon. Daniel C. Roper, Commissioner of Internal Revenue,  
Washington, D. C.

LAFAYETTE B. GLEASON.

ALEXANDER OTIS.

*September, 1919.*



## INTRODUCTION TO SECOND EDITION

---

The first edition of this book was received with such favor throughout the country that a second and revised edition would seem to be demanded.

Since the first edition was published, in the fall of 1917, twenty-five out of the fifty jurisdictions it attempts to cover have materially amended their statutes. These are:

1917 — Hawaii.

1918 — Louisiana, Massachusetts, Mississippi, Virginia.

1919 — Connecticut, Indiana, Illinois, Kansas, Michigan, Minnesota, Missouri, New Hampshire, North Carolina, North Dakota, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Wisconsin, Utah, and the Federal Act.

Most of the changes have been radical, and, due to war conditions, substantially all are in the direction of increased taxation.

This has been especially marked as to nonresident transfers. The only States that do not now tax transfers of stock in domestic corporations held by nonresident decedents are Delaware, Indiana, Massachusetts, Maryland, Mississippi, Nebraska, New Hampshire, Rhode Island, Virginia and Vermont.

Only three States now have failed to pass inheritance tax acts. These are Alabama, Florida and South Carolina. Alaska and the District of Columbia do not tax inheritances.

Only three States now confine such taxation to transfers to collaterals and strangers. These are Iowa, Maryland and Texas.

## EVERY ESTATE ATTORNEY MUST KNOW THE LAW OF OTHER STATES.

In this respect inheritance taxation differs from almost every other branch of the law.

Every estate of over fifty thousand dollars in value is subject to the Federal Tax.

Almost every estate has investments in the stock of foreign corporations. It is therefore necessary for estate attorneys to be familiar with the inheritance tax laws and decisions in every State in the Union.

It is the province of this book to afford them such information.

## THE STATUTES.

One of the chief difficulties presented by the task is the fact that changes in the law affect only the estates of those dying after the date of the change. It is therefore necessary to give the rates and some of the provisions of prior statutes as well as those now in force in the several States. These statutes, with their amendments, if published in full, would fill several volumes. Careful condensation and elimination is therefore essential.

## THE TABLE OF CASES.

It is necessary also to know what the divergent authorities in the several States hold on a given question. To afford this information the table of cases has been arranged by States, so that the attorney can see at a glance what the authorities are in a particular State. If the particular point is not covered by them the general trend of authority given by the book will serve as a guide. With the exception of California, Illinois, Massachusetts, Pennsylvania, and New York, the authorities are not too numerous to apply this method readily.

### THE SYLLABUS.

In order to cover this wide field intelligibly especial attention has been given to the Syllabus. The various topics have been arranged under six main subdivisions: I. The Tax; II. The Transfer; III. The Parties; IV. The Property; V. Procedure; VI. The Statutes; and these are supplemented by an appendix giving the statutes of all the States; Forms; List of Officials to be addressed in the several States by nonresident attorneys; list of corporations, showing in what States they are incorporated, and an abstract of all the State Statutes, with the more important and recent acts in full.

### LIFE INSURANCE.

The problems of Inheritance Taxation as related to Life Insurance were covered incidentally in the first edition, and attracted such wide attention from the insurance fraternity that a special subdivision, covering the subject in greater detail, has seemed advisable. No State excepting Tennessee specifically taxes life insurance when payable to the beneficiary. The Federal act of 1919 attempts to tax such policies where they are in excess of \$40,000; but the constitutionality of this provision has been called in question and is very doubtful. It is, perhaps, the only remaining form of investment that escapes inheritance taxation.

### THE FEDERAL STATUTE.

The Federal act of 1916 was amended in March and October, 1917, and an entirely new statute has been passed in 1919. This has necessitated entirely new rules and regulations for its enforcement. The question of the constitutionality of these statutes remains to be tested before the Supreme Court of the United States. The long delay in raising the question and resolving the serious doubt in the

mind of every lawyer who has studied the question is probably due to war conditions, which are now rapidly passing away.

#### THE NEW YORK STATUTE.

The New York Legislature, in May, 1919, abolished the distinction between tangible and intangible assets introduced by the act of 1911. It was hoped by those who drew this act that the other States of the Union would follow the lead of this State and that double taxation would thus be avoided. Only a few of the other States accepted the invitation and it proved a costly experiment for the State of New York.

#### THE PENNSYLVANIA STATUTE.

Until 1917 Pennsylvania taxed only transfers to collaterals and strangers, and was one of the most conservative States in the Union in dealing with nonresident transfers. In 1917 she extended the tax to direct heirs, and in 1919 taxed the intangibles of nonresidents within the State. She cannot make charitable exemptions or introduce the system of graded rates prevailing in other States without an amendment to her constitution, but otherwise the new Pennsylvania act is in line with the general trend of legislation.

#### THE OHIO STATUTE.

Until 1919 Ohio taxed only transfers to collaterals and strangers and derived only a small revenue from inheritance taxes. She has this year fallen in line with her sister States and taxes transfers to direct heirs and the transfer of stock held by nonresidents in Ohio corporations. Hitherto but few litigations over inheritance taxation have arisen in this important State, but henceforward the subject will be an important one to the Ohio bar.



## CONCLUSION.

Without attempting any further analysis of the many important changes wrought by the legislation of the last two years, the authors submit that a revised second edition, bringing the book up to date and covering the important decisions as well as the statutory changes of the last two years, is not only justified but demanded.

## THE MASSACHUSETTS STATUTE.

This State found additional revenue essential but did not wish permanently to increase the rates. It adopted the novel expedient in 1918 of adding 25% of the tax upon the estates of all persons dying after May 4, 1918, and prior to May 4, 1919. It also, by amendment in 1918, allowed a discount of 4% for prompt payment of the tax before due. Prior to this, Massachusetts has never allowed a discount for anticipated payment of the tax.

## THE CONNECTICUT STATUTE.

Connecticut has made a new departure by its amendment of 1919. It now taxes the intangible property of non-residents within the State, including bonds, securities and choses in action, where the evidence of ownership is within the State, and stock and bonds of domestic corporations, though the certificates are not within the State, where the *State of domicile* of the decedent imposes such taxes on residents of Connecticut. Tennessee and New Mexico have followed the lead of Connecticut and adopted similar provisions.



# TABLE OF CONTENTS

---

	PAGE
Preface to Second Edition.....	iii
Introduction to Second Edition.....	v
Syllabus.....	xiii
Table of Cases:	
a. New York .....	xxv
b. Other States, arranged alphabetically.....	li
Part I — The Tax .....	1
Part II — The Transfer .....	84
Part III — The Parties .....	212
Part IV — The Property .....	307
Part V — Procedure.....	404
Part VI — The Statutes .....	532
The Federal Act and Regulations.....	550
The New York Statute.....	685
Appendix.....	769
List of Inheritance Tax Officials.....	771
List of Corporations, Where Incorporated.....	775
New York Forms.....	789
State Statutes in Alphabetical Order, including Forms in Many In- stances.....	811
Special Index, U. S. Statute.....	1071
Index.....	1083





# SYLLABUS

## PART I — THE TAX

PAGE

<b>FUNDAMENTAL PRINCIPLES.</b> . . . . .	1
1. Origin. . . . .	1
2. Theory. . . . .	4
3. Extension of Legislative Power. . . . .	6
4. A Distinct Department of Jurisprudence. . . . .	6
5. Trend of Recent Authorities. . . . .	6
<b>A. Not a Tax on Property but on the Right to Receive and Inherit It.</b> . . . .	8
1. Review of the Authorities. . . . .	9
2. The Privilege Taxed. . . . .	17
3. Practical Applications of the Rule. . . . .	20
a. Not a Direct Tax to be Apportioned among the States. . . . .	20
b. Rules as to Uniformity and Equality Modified. . . . .	21
c. Power to Levy not Included in Municipal Charters. . . . .	21
d. Property Otherwise Exempt must be Included. . . . .	21
e. Construction of Contracts. . . . .	22
f. Personalty of Resident Taxed, though in Foreign Jurisdiction. . . . .	22
g. Intangibles of Non-resident within the Jurisdiction Taxable. . . . .	25
h. Double Taxation. . . . .	25
<b>B. The Transfer Takes Place at Death.</b> . . . .	28
1. Vested Right of the State. . . . .	29
2. Renunciation by Legatee. . . . .	32
3. Law in Force at Date of Proceedings Controls Procedure Only. . . . .	34
4. Rate Fixed at Death Cannot be Increased. . . . .	34
5. Rights Vested Prior to Death Cannot be Taxed. . . . .	35
6. Gains or Losses During Administration. . . . .	36
7. Exceptions to the Rule. . . . .	38
a. By Nature of the Transfer. . . . .	38
b. By Statute. . . . .	39
<b>C. Classifications.</b> . . . .	41
1. By Domicile. . . . .	43
2. By Relationship. . . . .	44
3. By Amount of Property Transferred. . . . .	45
a. Where the Tax is on the Right to Receive. . . . .	45
b. Where the Tax is on the Right to Transfer. . . . .	46
4. By the Kind of Property Transferred. . . . .	48

<b>C. Classification — Continued</b>	<b>PAGE</b>
a. Real and Personal. ....	48
b. Tangibles and Intangibles. ....	49
c. Other Property Distinctions. ....	49
5. By Payment of Other Taxes. ....	52
6. By the Kind of Transfer. ....	52
<b>D. General Rules of Construction</b> .....	53
1. Strict or Liberal. ....	53
2. Exemptions. . . . .	55
3. Retroactive or Prospective. ....	56
4. Statutes Held Invalid. ....	60
5. Statutes Sustained under the Fourteenth Amendment. ....	61
6. Notice and a Hearing. ....	64
7. Copied or Adopted Statutes. ....	65
8. Practical Construction. ....	66
9. Arbitrary or Confiscatory Rates. ....	67
10. Public Purpose. ....	67
11. Amendment. ....	68
12. Repeal. ....	69
a. Saving Clauses. ....	70
b. By Implication. ....	71
c. Incidental Effects. ....	72
13. Unconstitutional Statutes. ....	73
14. Other General Rules. ....	73
<b>E. Conflict of Laws</b> . ....	74
1. Jurisdiction. . . . .	74
2. Devolution Controlled by Foreign Laws. ....	75
3. Full Faith and Credit. ....	75
4. Proof of Foreign Laws. ....	76
5. As to Sister States. ....	77
6. As against Aliens Protected by Treaties. ....	78
7. Reciprocal Provisions. ....	81

## PART II — THE TRANSFER

<b>A. Transfers by Will and Intestacy</b> .....	84
1. Testamentary Provisions which may Affect the Tax. ....	84
a. What a Testator Cannot Do. ....	85
b. What He Can Do. ....	86
2. Transfers Pursuant to Agreements to Make a Will. ....	87
a. Where the Agreement is Violated. ....	87
b. Where the Agreement is Performed. ....	89
3. Compromise Agreement between Heirs and Devisees. ....	93
4. Payment of Debt by Will. ....	97
5. As Affected by Statute. ....	99
6. Transfers by Intestate Law. ....	100

A. Transfers by Will and Intestacy — Continued	PAGE
a. As to Real Estate.....	100
b. As to Personal Property.....	101
B. Gifts.....	103
1. Valid and Invalid.....	104
a. Burden of Proof is on Donee.....	104
b. There Must be a Present Intent to Give.....	105
c. There Must be Delivery of the Thing Given.....	106
d. Delivery to an Agent.....	106
(1) To Agent of Donor.....	107
(2) To Agent of Donee.....	108
e. Symbolical Delivery.....	109
f. Re-Delivery by Donee to Donor.....	109
g. Power of Revocation.....	111
h. Stock Transfer Stamps.....	113
i. Consideration.....	114
2. Gifts Causa Mortis.....	114
3. Gifts in Contemplation of Death.....	115
a. Nature of the Contemplation.....	115
b. Advanced Age alone Insufficient.....	119
c. Statutory Time Limit.....	123
d. Tax Accrues at Date of Gift.....	123
4. Gifts take Effect at or after Death.....	124
a. Trust Deed Reserving Income to Donor.....	125
b. Where Part of the Income is Reserved.....	130
c. Where the Life Use is Waived.....	130
d. Reservation of Power to Revoke.....	131
C. Consideration as Affecting Testamentary Transfers.....	136
1. Where the Transaction is Completed Inter Vivos.....	138
2. Where the Contract is Executory.....	141
3. The Consideration must be Adequate.....	151
4. Burden of Proof.....	156
D. Life Insurance.....	157
1. Nature of the Contract.....	158
2. No Title to Fund in Assured.....	158
3. The Insurance Company Pays the Taxes.....	159
a. State Taxes.....	159
b. Federal Taxes.....	160
4. Proceeds Taxable as Inheritance when Payable to Estate.....	162
5. Where Payable to Beneficiary not Taxable.....	165
6. Construction of Policies.....	171
7. Statutory Provisions.....	173
E. Power of Appointment.....	173
1. The Common Law Rule.....	173
2. The Statutory Rule.....	175
3. The New York Rule.....	176

<b>E. Power of Appointment — Continued</b>	<b>PAGE</b>
4. The Massachusetts Rule. ....	176
5. Development of the New York Rule.....	179
6. Construction of Wills.....	180
7. Where Power is Exercised by Deed.....	181
8. Questions of Residence. ....	183
<b>F. Common Law Transfers. ....</b>	<b>185</b>
1. Dower. . . . .	185
2. Tenancy by the Curtesy.....	189
3. Marital Right. ....	189
4. Tenancies by the Entirety.....	190
a. Not Taxable as an Inheritance.....	190
b. Nature of the Estate.....	191
c. How Created. ....	192
d. How Terminated. ....	194
e. Effect of Taxing Statute.....	194
5. Joint Tenancy. ....	197
a. Not Generally Taxable. ....	197
b. Where Succession is Specifically Taxed.....	200
c. Construction of the Statute.....	201
6. Escheat. . . . .	205
<b>G. Civil Law Transfers. ....</b>	<b>207</b>
1. Taxable. . . . .	207
2. Not Taxable. ....	207
3. Gains Acquired in Foreign Country Exempt.....	208
4. Gains Acquired in this Country Taxable.....	208

### PART III — THE PARTIES

<b>A. The Decedent. ....</b>	<b>212</b>
1. Residence and Domicile Synonymous.....	213
2. Rules as to Domicile.....	213
3. Application of the Rules.....	214
a. Factum Without Animus. ....	214
b. Animus Without Factum. ....	215
c. Animus With Factum.....	217
d. As to a Married Woman.....	218
e. As to a Widow.....	218
f. As to an Army Officer.....	219
g. The Burden of Proof.....	220
h. Construction as Affected by Statute.....	221
<b>B. The Beneficiaries — Generally. ....</b>	<b>223</b>
1. As to Domicile.....	223
2. Relationship to Decedent.....	225
a. Grandchildren. . . . .	225
b. Step-Children. . . . .	226

<b>B. The Beneficiaries — Generally — Continued</b>	<b>PAGE</b>
c. Illegitimate Children.....	226
d. Adopted Children.....	226
(1) Adoption by Formal Act.....	227
(2) Mutually Acknowledged Children.....	227
e. Effect of Adoption.....	229
f. Other Relationships.....	230
3. Personal Exemptions.....	231
4. Exemptions to Charities.....	233
a. Charter Powers the Test.....	234
b. Purposes Must be Brought Within the Language of the Statute.....	237
c. Bequests Held Exempt.....	241
d. Bequests Held Taxable.....	243
<b>C. Heirs and Legatees.....</b>	<b>244</b>
1. Heirs of Real Estate.....	244
a. Lien of the Tax.....	244
b. Partition.....	246
c. Equitable Conversion.....	247
d. Sale to Pay the Tax.....	247
e. When Charged With a Legacy.....	248
f. As to Aliens.....	248
2. Legatees of Personal Property.....	248
a. Renunciation and Assignment.....	248
b. Legacy Impressed With a Trust.....	249
c. Lapsed Legacies.....	250
3. While the Legacy is in Custodia Legis.....	251
4. From What Fund Payable.....	252
<b>D. Life Estates and Remainders.....</b>	<b>254</b>
1. Life Estates.....	254
a. Fund from Which the Tax is Payable.....	255
b. Charged With an Annuity.....	257
c. Power to Invade Principal.....	258
d. The New York Rule.....	259
e. With Power of Appointment.....	263
f. Tax Assessed on Theoretical, Not Actual Value.....	263
2. Remainders.....	265
a. The Law in Force at Death of Testator Governs.....	266
b. Vested Remainders Not Taxable When Testator Died Before the Statute.....	266
c. Taxation Postponed Until Remainderman Gets Possession.....	267
d. Presently Taxable.....	267
e. When Beneficiary is Uncertain.....	268
f. Highest Possible Rate.....	270
g. Maximum and Minimum Rate.....	276
h. Where Amount of Remainder is Uncertain.....	277

<b>D. Life Estates and Remainders — Continued</b>	<b>PAGE</b>
i. Under Powers of Appointment.....	278
j. Taxation at Full Undiminished Value.....	281
<b>E. Computations. . . . .</b>	<b>283</b>
1. The Basis of Calculation.....	283
a. Mortality Tables and Interest Rate.....	283
b. Compound Interest Rule. ....	286
c. Present Worth Rule.....	286
d. The Law of Discount.....	287
e. Law of the Chance of Death.....	288
f. Rule of the Chance of Death, as Affecting Present Worth.	288
g. Rule for Calculating Present Value of Life Estates.....	289
2. Tables for Computing the Present Worth of Annuities.....	289
a. Actuaries Combined Table at 4%.....	291
b. Actuaries Combined Table at 5%.....	292
c. American Experience Table at 4%.....	293
d. American Experience Table at 5%.....	294
e. Carlisle Table at 5%.....	295
f. Carlisle Table at 6%.....	296
g. American Experience Table of Mortality.....	297
3. How to Use the Tables.....	298
a. The Necessary Factors.....	298
b. Ascertaining the Value.....	298
4. Application to the Problems of Inheritance Taxation.....	298

## PART IV — THE PROPERTY

<b>A. As to Situs. ....</b>	<b>307</b>
1. Real Estate. ....	307
a. Taxable only Where Located.....	307
b. No Equitable Conversion. ....	308
c. Land Contracts. ....	310
d. Leases. . . . .	311
2. Tangibles. ....	312
3. Mortgages, Bonds and Commercial Paper.....	313
a. Situs at Domicile of Owner.....	313
b. Where the Land Lies.....	314
c. Where Physically Present.....	315
d. "Transient" or "Habitual" Presence.....	317
4. Corporate Stock . . . . .	318
a. Of Domestic Corporations.....	318
b. Foreign Corporations Owning Property Within the State..	320
c. Foreign Corporations Not Owning Property Within the State. . . . .	322
d. Apportionment of Corporate Property.....	323
e. Pledged Securities. ....	324

A. As to Situs — Continued	PAGE
5. Other Choses in Action.....	328
a. Bank Deposits. ....	328
b. Debts. ....	330
c. Life Insurance. ....	331
d. Seat in the Stock Exchange.....	331
e. Interest of Non-Resident in Estate of Deceased Non-Resident. ....	332
f. Partnership Interest. ....	332
B. As to Value. ....	334
1. Where the Value at Death Cannot be Ascertained.....	334
2. Real Estate. ....	337
3. Tangibles. ....	340
a. Pictures. ....	340
b. Furniture. ....	340
c. Jewelry. ....	341
4. Notes and other Obligations.....	343
5. Stocks. ....	343
a. Active Securities. ....	343
b. Inactive Securities. ....	345
c. Closely Held Stocks. ....	346
6. Bonds. ....	352
7. Pledged Securities. ....	352
a. As to the Non-Resident Pledgor.....	352
b. As to the Pledgee.....	353
8. Partnerships. ....	354
9. Good Will. ....	358
a. A Taxable Asset. ....	358
b. Rules for Computation.....	359
c. Number of Years' Purchase.....	360
d. When the Profits are Speculative.....	368
e. When no Profits are Shown.....	369
C. Deductions. ....	374
1. Mortgages. ....	375
2. Debts. ....	375
a. Liability on Mortgage Bond.....	376
b. Repairs to Real Estate.....	376
c. Debts Paid by Will.....	377
d. Doubtful Claims. ....	379
3. Funeral and Burial Expenses.....	379
4. Administration Expenses and Counsel Fees.....	380
5. Discount on Legacy.....	381
6. Expenses of Litigation.....	382
a. Where to Conserve the Estate.....	382
b. Disputes Among the Beneficiaries.....	382

C. Deductions — Continued	PAGE
7. Taxes. . . . .	383
a. Other Inheritance Taxes. . . . .	383
b. General Taxes and Assessments. . . . .	385
8. Commissions. . . . .	386
a. To Executors. . . . .	386
b. To Trustees. . . . .	388
c. On Sale of Real Estate. . . . .	390
9. Family Allowance. . . . .	390
10. Pro Rating Debts. . . . .	392
a. When the Local Debts Exceed the Local Assets. . . . .	392
b. When there are Local Assets and no Legal Debts. . . . .	393
c. When Local Debts are Paid with Foreign Assets. . . . .	394
d. When there are both Local and Foreign Debts and Assets. . . . .	395
e. As to Partnerships. . . . .	396
11. Marshaling Assets to Reduce Tax. . . . .	398
a. When the Executor can do so. . . . .	398
b. When he cannot. . . . .	399

## PART V — PROCEDURE

A. Preliminaries. . . . .	404
1. Motions to Exempt. . . . .	404
2. In Case of Nonresidents. . . . .	409
3. The Safe Deposit Box. . . . .	412
a. Comptroller May Inspect. . . . .	412
b. May Not Impose Arbitrary Conditions. . . . .	414
c. Consent for Transfer of Funds. . . . .	414
a. Property Belonging to Another. . . . .	415
4. Inventory. . . . .	416
a. Must be Filed by Executor. . . . .	416
b. Form of Affidavit. . . . .	417
c. Preparation of Inventory. . . . .	423
d. Form of Inventory. . . . .	431
B. Proceedings Before Appraiser. . . . .	439
1. Appraisers. . . . .	440
a. Appointment and Removal. . . . .	440
b. Powers and Duties. . . . .	441
2. Notice. . . . .	444
a. Notice is Jurisdictional. . . . .	444
b. Notice by Mail Sufficient. . . . .	447
c. Where Notice is Impossible. . . . .	448
d. Presumption of Notice. . . . .	448
3. Hearings. . . . .	449
a. Informal Upon Affidavits. . . . .	449
b. Burden of Proof. . . . .	450
c. Witnesses. . . . .	451



B. Proceedings Before Appraiser — Continued	PAGE
d. Personal Transactions with Deceased.....	453
e. Corporate Books.....	454
f. Objections.....	455
g. Proof of Foreign Law.....	457
4. Report.....	457
a. What It Should Contain.....	457
b. What It Must Show.....	459
c. Where Taxation is Suspended.....	459
d. Form of Report.....	461
C. Proceedings on Appeal.....	466
1. Jurisdiction of Probate Court.....	466
a. Effect of Probate Decree.....	466
b. Decree of Distribution.....	469
c. Jurisdiction of the Tax Proceedings.....	470
2. Assessment of the Tax.....	471
a. The Judge Acts as Taxing Officer.....	471
b. The Taxing Order.....	473
c. Report May be Remitted to Appraiser.....	474
d. Forms of Taxing Order.....	475
(1) Where There are no Contingent Remainders.....	475
(2) Present Taxation of Contingent Remainders.....	476
e. Effect of Decree Assessing Tax.....	481
3. Appeal to the Surrogate.....	483
a. Notice of Appeal.....	485
b. Form of Notice.....	485
4. Determination by Surrogate.....	488
a. Hearings on Appeal.....	490
b. On Motions to Exempt.....	491
c. Order Remitting Report.....	493
d. Supplemental Report of Appraiser.....	493
e. Second Taxing Order.....	495
f. Notice of Appeal from Second Taxing Order.....	496
g. Taxing Order Upon Second Appeal.....	498
h. Notice of Appeal to Appellate Division.....	499
5. Before the Appellate Courts.....	500
a. Who May Appeal.....	501
b. Order Appealed From.....	503
c. Service of Notice of Appeal.....	505
d. Papers on Appeal.....	505
e. Costs.....	506
f. Appeals to Court of Appeals.....	507
g. To Supreme Court of United States.....	508
D. Subsequent Proceedings.....	508
1. Motions to Modify Decree.....	508
a. Where There Was a Mistake of Fact.....	509

<b>D. Subsequent Proceedings — Continued</b>	<b>PAGE</b>
b. Where There Was Lack of Jurisdiction.....	511
c. May Not Correct an Error of Law.....	512
d. Laches . . . . .	514
e. Bad Faith . . . . .	515
f. Statute of Limitations . . . . .	517
2. Motions to Remit Penalty . . . . .	518
3. Mandamus . . . . .	521
a. When Writ Allowed.....	521
b. When Refused . . . . .	523
4. Proceedings to Collect Delinquent Taxes.....	524
5. Personal Liability of Executor or Administrator.....	525
6. Personal Liability of Beneficiaries.....	527
7. Compromise Agreements . . . . .	528
8. Application of Tax Money.....	528
9. Interest . . . . .	529

## PART VI — THE STATUTES

<b>A. General Review of the State Statutes.....</b>	<b>532</b>
1. Wherein They Agree.....	532
a. Transfers by Will and Intestacy.....	532
b. Transfers in Avoidance.....	532
c. Common Law Transfers.....	533
d. Powers of Appointment.....	534
e. Life Estates . . . . .	534
f. Remainders. . . . .	535
g. Executors and Their Duties.....	536
h. Appraisal. . . . .	536
i. Valuation. . . . .	537
j. Interest, Discount and Penalty.....	537
k. Banks and Trust Companies.....	542
l. The Interest Taxed.....	542
2. Wherein They Differ.....	543
a. Collaterals and Strangers Only.....	543
b. Nonresident Decedents . . . . .	543
c. Tangibles and Intangibles.....	544
d. Reciprocal Statutes . . . . .	544
e. Double Taxation . . . . .	545
3. As Producers of Revenue.....	546
a. The Rate . . . . .	546
b. Exemptions. . . . .	546
c. Facts as to Revenue.....	548
<b>B. The Federal Statute.....</b>	<b>550</b>
1. History and Development.....	550
a. Revolutionary War Tax 1797 to 1802.....	551

<b>B. The Federal Statute — Continued</b>	<b>PAGE</b>
b. Civil War Tax 1862 to 1870.....	551
c. Spanish War Tax 1898 to 1902.....	552
<b>2. The Act of 1916 and Amendments.....</b>	<b>553</b>
a. Doubtful Constitutionality .....	553
b. Construction by the State Courts.....	556
c. Expert Opinion .....	565
<b>3. Rates of Tax.....</b>	<b>567</b>
a. Under Act of September 8, 1916.....	567
b. Under Amendment of March 3, 1917.....	567
c. Additional War Tax after October 3, 1917.....	568
d. Tabulation of Rates.....	569
<b>4. Act of 1916.....</b>	<b>569</b>
<b>5. Amendment of March 3, 1917.....</b>	<b>576</b>
<b>6. Amendment of October 3, 1917.....</b>	<b>578</b>
<b>7. The Present Statute and Treasury Department Regulations...</b>	<b>579</b>
<b>8. Federal Forms .....</b>	<b>665</b>
<b>C. The New York Statute.....</b>	<b>685</b>
<b>1. History and Development.....</b>	<b>685</b>
a. Frequent Changes .....	685
b. List of the Statutes.....	686
c. The First Statutes Taxing Only Collaterals.....	687
d. The Act of 1892 Taxing Direct Inheritances.....	688
e. The Act of 1896 — Powers of Appointment.....	689
f. Amendment of 1899 — Highest Rate.....	691
g. Act of 1905 — Real Estate Added.....	692
<b>2. The Present Act and Its Amendments.....</b>	<b>692</b>
a. The Original Statute of 1909.....	692
b. The “Reign of Terror Act”.....	693
c. A Radical Change in Theory as to the Transfer Taxed....	694
d. The Amendments of 1911 — Tangibles and Intangibles...	695
e. The Tax Extended to Curtesy.....	695
f. Maximum and Minimum Rates.....	696
<b>3. The Problem as the Property of Nonresidents.....</b>	<b>696</b>
a. The Previous Policy of the State.....	696
b. Real Estate of Corporations.....	697
c. Copartnership Assets .....	698
d. Capital Invested in Business.....	699
e. Attempt to Define a Resident.....	702
f. Distinction Between Tangibles and Intangibles Abolished.	706
<b>4. Recent Amendments .....</b>	<b>707</b>
a. Exemptions. . . . .	707
b. Joint Estates .....	707
c. Tenancy by the Entirety.....	708
d. Computations. . . . .	708

		PAGE
<b>C. The New York Statute — Continued</b>		
e. The New Rates and Exemptions.....		709
f. Minor Amendments of 1917, 1918 and 1919.....		713
<b>5. Additional Tax on Investments.....</b>		<b>714</b>
a. The Statute .....		714
b. Held Unconstitutional by the Lower Courts.....		717
c. Act Sustained by the Court of Appeals.....		719
d. Questions of Construction.....		727
(1) As to Personal Property Assessment.....		727
(2) As to Exemptions.....		729
(3) As to Debts.....		730
(4) Who Must Pay.....		730
<b>6. The Income Tax.....</b>		<b>000</b>
<b>7. Text of the New York Statute with Amendments to Date.....</b>		<b>731</b>

# TABLE OF CASES ARRANGED BY STATES

[References are to pages]

## NEW YORK\*

### A

Abbett, 29 Misc. 567, 61 Supp. 1067.....	165
Abraham, 151 App. Div. 441, 135 Supp. 891.....	29, 34
Achelis, N. Y. L. J., March 9, 1912.....	347
Adams v. Anderson, 23 Misc. 705, 53 Supp. 141.....	101
Adee v. Campbell, 79 N. Y. 52.....	103
Adsit v. Adsit, 2 Johns. Ch. 448.....	187
Ætna Ins. Co. v. Mayor, etc., 153 N. Y. 331, 47 N. E. 593.....	511
Agnew, N. Y. L. J., Dec. 13, 1913.....	131
Ahrens, N. Y. L. J., May 10, 1913.....	451
Albany County Sav. Bk. v. McCarty, 149 N. Y. 71.....	189
Albrecht, 136 N. Y. 91, 32 N. E. 632.....	191
Albright, 93 Misc. 388, 156 Supp. 821.....	242
Allen, 76 Misc. 88, 136 Supp. 327.....	242
Althause, 63 App. Div. 252, 71 Supp. 445; aff. 168 N. Y. 670, 61 N. E. 1127.....	311
Altman, 87 Misc. 256, 149 Supp. 601.....	235
Ambrosius v. Ambrosius, 167 App. Div. 244, 152 Supp. 562.....	457
Ames, 141 Supp. 793.....	325
Ames v. Duryea, 6 Lans. 155; aff. 61 N. Y. 609.....	220
Amherst College v. Ritch, 151 N. Y. 282, 45 N. E. 876.....	482
Amsinck, 155 Supp. 1089.....	376
Anderson, N. Y. L. J., Dec. 20, 1916.....	340
Andrews, N. Y. L. J., Feb. 21, 1912.....	190
Anthony, 40 Misc. 497, 82 Supp. 789.....	357
Armstrong, N. Y. L. J., Feb. 20, 1912.....	252
Arnett, 49 Hun 299, 2 Supp. 428.....	446
Arnold, 114 App. Div. 244, 99 Supp. 704.....	337, 424, 471
Arnot, 145 App. Div. 708; aff. 203 N. Y. 627.....	55, 241
Asche v. Asche, 113 N. Y. 232, 21 N. E. 70.....	187

\* Following New York, the different States are arranged alphabetically.

Astor, 137 App. Div. 922, 122 Supp. 1121.....	475
Atterbury, N. Y. L. J., March 25, 1913.....	131
Augsbury v. Shirtliff, 180 N. Y. 138, 72 N. E. 927.....	107

**B**

Babcock, 115 N. Y. 450, 22 N. E. 263.....	385, 424
Babcock, 37 Misc. 445, 75 Supp. 926; aff. 81 App. Div. 645, 81 Supp. 1117 .....	258
Bach, 147 Supp. 229.....	351, 454
Backhouse, 110 App. Div. 737, 96 Supp. 466; aff. 185 N. Y. 544, 77 N. E. 1181.....	179, 445, 511
Bacon, 126 N. Y. mem.....	127
Badger, N. Y. L. J., June 8, 1912.....	515
Bain, 104 Misc. 508.....	218
Baird, 126 App. Div. 439, 110 Supp. 708.....	391
Baldwin, N. Y. L. J., August 21, 1912.....	383
Baker, 38 Misc. 151, 77 Supp. 170.....	441, 475
Baker, 67 Misc. 360, 124 Supp. 827.....	310
Baker, 83 App. Div. 530, 82 Supp. 390; aff. 178 N. Y. 575, 70 N. E. 1094. ....	140
Balch, 93 Misc. 419, 156 Supp. 1006; aff. 175 App. Div. 933.....	217
Ball, 161 App. Div. 79, 146 Supp. 499.....	113, 359, 367, 456
Balleis, 144 N. Y. 132.....	243
Barber v. Brundage, 50 App. Div. 123, 63 Supp. 347; aff. 169 N. Y. 368. ....	100
Barbey, 114 Supp. 725.....	186
Barbour, 185 App. Div. 445, 173 Supp. 276; aff. 226 N. Y. mem.....	703
Barnaby, 104 Mass. 362, 171 Supp. 989.....	227, 710
Barnes, 83 Misc. 272, 114 Supp. 794.....	443
Barnes v. Underwood, 47 N. Y. 351.....	190
Barney v. Pike, 94 App. Div. 199, 87 Supp. 1038.....	357
Barnum, 129 App. Div. 418, 114 Supp. 33.....	339, 491, 513
Barrett, 132 App. Div. 134, 116 Supp. 736.....	251
Barry, 62 Misc. 456, 116 Supp. 798.....	103
Bartlett, 4 Misc. 380, 25 Supp. 990.....	377, 425
Bartow, 30 Misc. 27, 62 Supp. 1000.....	247
Bass, 57 Misc. 531, 109 Supp. 1084.....	256
Baucus v. Stover, 24 Hun 109.....	391
Baudouine, 5 App. Div. 622, 39 Supp. 1121.....	338, 376
Baumgrass v. Baumgrass, 5 Misc. 8, 24 Supp. 767.....	260
Baylies, 148 Supp. 912.....	392
Beach, 154 N. Y. 242, 48 N. E. 516.....	226
Beakes Dairy Co. v. Berns, 128 App. Div. 137, 112 Supp. 529.....	112
Beal, 167 App. Div. 916, 151 Supp. 1103; aff. 215 N. Y. 620.....	128
Bean v. Flint, 138 App. Div. 846, 204 N. Y. 153, 97 N. E. 490.....	456

Beaver v. Beaver, 117 N. Y. 421, 22 N. E. 940.....	104, 105
Becker, 26 Misc. 633, 57 Supp. 940.....	555
Beckhardt, N. Y. L. J., June 7, 1913.....	189
Bell, 94 Misc. 552, 158 Supp. 142.....	451
Bell v. Warn, 4 Hun 406.....	260
Bender, 44 Misc. 79, 89 Supp. 731.....	226
Benjamin, 155 App. Div. 233, 139 Supp. 1091.....	30
Benson, 99 Misc. 222, 164 Supp. 933.....	230
Bennett, N. Y. L. J., October 24, 1906; aff. 120 App. Div. 904, 105 Supp. 1107 .....	328
Bennington, 67 Misc. 363, 124 Supp. 829.....	377
Bentley, 31 Misc. 656, 66 Supp. 95.....	489
Bernard, 89 Misc. 705, 152 Supp. 716.....	206
Berry, 29 Misc. 230, 51 Supp. 1132.....	375
Bertles v. Noonan, 92 N. Y. 152.....	194
Bierstadt, 178 App. Div. 836, 166 Supp. 168.....	383, 556
Billor v. Loundes, 2 Dem. 590.....	262
Billingsly, 1 State Dept. Rep. 569.....	478
Bingham, 86 Misc. 566, 148 Supp. 918.....	257
Bird, 11 Supp. 895, 2 Con. 376.....	381
Birdsall, 22 Misc. 180, 49 Supp. 450; aff. 43 App. Div. 624, 60 Supp. 1133. ....	137, 431, 451
Bishop, 82 App. Div. 112, 81 Supp. 474.....	322, 417, 453
Bishop, 111 App. Div. 545, 97 Supp. 1098; appeal dismissed, 188 N. Y. 635, 81 N. E. 1159.....	490
Bishop v. S. L. E. O. of M. A., 112 N. Y. 627.....	171
Black, 5 Supp. 452.....	379
Blackstone, 69 App. Div. 127, 74 Supp. 508; aff. 171 N. Y. 682, 64 N. E. 1118.....	27
Bloss, 100 Misc. 643, 166 Supp. 1005.....	186
Blun, 176 App. Div. 189, 160 Supp. 731.....	259, 389
Blynn, 160 Supp. 730.....	258
Bodman, 100 Misc. 390.....	356
Bolin, 136 N. Y. 177, 32 N. E. 626.....	104, 108
Bolles, 67 Misc. 40, 124 Supp. 620.....	386
Bolton, 35 Misc. 688, 72 Supp. 430.....	446, 459
Bolton, 210 N. Y. 618, 104 N. E. 1127.....	228
Bolton v. Schreiber, 135 N. Y. 65, 31 N. E. 1001.....	467
Bogert, 25 Misc. 466, 35 Supp. 751.....	481
Boon v. Moss, 70 N. Y. 465.....	366
Borden, 95 Misc. 453, 159 Supp. 346.....	354
Bostwick, 160 N. Y. 489, 55 N. E. 208.....	128, 131, 132, 148, 153
Boyle, 92 Misc. 143, 156 Supp. 173.....	509
Brady, N. Y. L. J., February 5, 1913.....	506
Brandreth, 169 N. Y. 437, 62 N. E. 563.....	110, 111, 148, 349

Brennan, 92 Misc. 423, 157 Supp. 141.....	112
Brenner, 170 N. Y. 185, 63 N. E. 133.....	73
Brez, 172 N. Y. 609, 64 N. E. 958.....	181, 267
Brooks, 105 Misc. 159, 174 Supp. 765.....	218
Brooks, 32 Supp. 176.....	175
Bronson, 150 N. Y. 1, 44 N. E. 707.....	313, 316, 319
Brower, N. Y. L. J., July 15, 1913.....	520
Brown, 86 Misc. 187, 149 Supp. 138; aff. 167 App. Div. 912, 151 Supp. 1106 .....	105
Browne, 127 App. Div. 941, 111 Supp. 1111; aff. 195 N. Y. 522, 88 N. E. 1115.....	395, 507
Brown v. Lawrence Park Realty Co., 133 App. Div. 153, 118 Supp. 132. ....	245
Bruce, 59 Supp. 1083.....	513
Bruce v. Griscom, 9 Hun 280; aff. 70 N. Y. 612.....	377
Brundage, 31 App. Div. 348, 52 Supp. 362.....	74, 385, 431, 454, 455
Brush, Isabel, N. Y. L. J., April 26, 1917.....	180
Brush, John T., N. Y. L. J., August 14, 1915.....	368
Buchanan, 184 App. Div. 237, 171 Supp. 708.....	205
Buckham, N. Y. L. J., January 10, 1912.....	281
Bucki, 172 App. Div. 455, 158 Supp. 657.....	282
Buckingham, 106 App. Div. 13, 94 Supp. 130.....	278, 517
Bunce, 222 N. Y. 31.....	710
Burden, 47 Misc. 329, 95 Supp. 972.....	328
Burgess, 204 N. Y. 265, 97 N. E. 591.....	278
Burgheimer, 91 Misc. 468, 154 Supp. 943.....	92, 148, 149
Burke v. Valentine, 52 Barb. 422.....	190
Burnham v. Comfort, 37 Hun 216; aff. 108 N. Y. 535.....	60
Burhans, 100 Misc. 646, 166 Supp. 1027.....	97, 138
Burr, 16 Misc. 89, 38 Supp. 811.....	328
Burr v. Palmer, 53 App. Div. 358, 65 Supp. 1056.....	385
Bushnell, 73 App. Div. 325, 77 Supp. 4; aff. 172 N. Y. 649, 65 N. E. 1115. ....	320
Butler, 58 Hun 400, 12 Supp. 201; aff. 136 N. Y. 649, 32 N. E. 1016. . . .	228, 431
Butler v. Johnson, 111 N. Y. 204, 18 N. E. 643.....	429
Butterfield, 161 App. Div. 506, 146 Supp. 671; aff. 211 N. Y. 395....	102
Byron v. Byron, 124 App. Div. 320, 119 Supp. 41.....	187

## C

Cadwalader, 96 Misc. 407, 160 Supp. 523.....	389
Cager, 111 N. Y. 343, 18 N. E. 866.....	267, 443
Cahen, N. Y. L. J., August 6, 1915.....	111
Calman, 100 App. Div. 517, 91 Supp. 1095.....	376



Cameron, 97 App. Div. 436, 89 Supp. 977; aff. 181 N. Y. 560, 74 N. E. 1115.....	441, 509
Campbell, 50 Misc. 485.....	509
Campbell v. Beaumont, 91 N. Y. 464.....	260
Canfield, 96 Misc. 119, 159 Supp. 735.....	312, 341
Capron, 10 Supp. 23.....	229
Cary, N. Y. L. J., January 20, 1914.....	239
Casey v. McGowan, 50 Misc. 426, 100 Supp. 536.....	187
Caswell, N. Y. L. J., April 24, 1914.....	131
Catlin v. Trustees of Trinity College, 113 N. Y. 133, 20 N. E. 864....	243
Chadwick, N. Y. L. J., June 23, 1917.....	516
Chamberlayne on "Evidence".....	450
Chambers, 155 Supp. 153.....	343, 345
Chambers, N. Y. L. J., January 21, 1912.....	453
Champney v. Blanchard, 39 N. Y. 11.....	109
Chapman, 61 Misc. 593, 115 Supp. 981; aff. 199 N. Y. 562, 93 N. E. 1118. ....	178
Chapman, 133 App. Div. 337, 117 Supp. 679.....	178
Chappell, 151 App. Div. 774, 136 Supp. 271.....	346
Chappell, 83 Misc. 673, 146 Supp. 798.....	386
Chauncey, 168 Supp. 1019.....	33, 249
Church, 176 App. Div. 910.....	118, 456
Church, 80 Misc. 447, 142 Supp. 284.....	185
Church of Transfiguration v. Niles, 86 Hun 221, 33 Supp. 944.....	240
Clark, N. Y. L. J., February 9, 1912.....	334, 354, 396
Clark, 40 Hun 233.....	189
Clark, 163 Supp. 972.....	347
Clarke, 39 Misc. 73, 78 Supp. 869.....	279
Clarkson, 149 Supp. 32.....	529
Cleveland, 158 Supp. 1099; aff. 171 App. Div. 908, 155 Supp. 1098. ....	113, 456
Clinton v. Hope Ins. Co., 45 N. Y. 454.....	171
Closs v. Eldert, 30 App. Div. 338, 51 Supp. 881.....	187
Clinch, 180 N. Y. 300, 73 N. E. 35.....	249, 251, 312, 332, 397
Cogswell, 4 Dem. (Sur.) 248.....	40
Cohen, 170 Supp. 156.....	150
Collard; 161 Supp. 455.....	388
Collins, 104 App. Div. 184, 93 Supp. 342.....	65, 405, 506
Collins v. Russell, 184 N. Y. 74, 76 N. E. 731.....	189
Columbia Bank v. Equitable L. Assn., 79 App. Div. 601, 80 Supp. 428. ....	158
Connolly, 38 Misc. 466, 77 Supp. 1032.....	482
Coogan, 27 Misc. 563, 59 Supp. 111; aff. 162 N. Y. 613, 57 N. E. 1107. ....	512, 521
Cook, 50 Misc. 487, 100 Supp. 628; aff. 187 N. Y. 253, 79 N. E. 991. ....	93, 227, 249, 352

Cook, 125 App. Div. 114, 109 Supp. 417; aff. 194 N. Y. 400, 87 N. E. 786. . . . .	504
Cooksey, 182 N. Y. 92, 74 N. E. 880. . . . .	179
Cooley, 186 N. Y. 220, 78 N. E. 939. . . . .	26, 323
Corbett, 171 N. Y. 516, 64 N. E. 209. . . . .	689
Cornell, 66 App. Div. 167, 73 Supp. 32; mod. 170 N. Y. 423, 63 N. E. 445. . . . .	110, 111, 148, 153, 502, 503
Corning, 3 Misc. 160, 23 Supp. 285. . . . .	317
Cortelyou v. Lansing, 2 Caines Cases, 200. . . . .	325
Cory, 177 App. Div. 871, 164 Supp. 956; aff. 221 N. Y. 612. .91, 141, 354	
Costello, 189 N. Y. 288, 82 N. E. 139. . . . .	441, 505
Coutts, N. Y. L. J., December 15, 1914. . . . .	232
Cowan, N. Y. L. J., July 24, 1913. . . . .	128
Cowie, 49 App. Div. 612, 63 Supp. 608. . . . .	491
Craig, 181 N. Y. 551, 74 N. E. 1116. . . . .	138
Crain, 98 Misc. 496, 164 Supp. 751. . . . .	390
Crary, 31 Misc. 72, 64 Supp. 566. . . . .	343
Crawford, 85 Misc. 283, 147 Supp. 234. . . . .	352, 454, 482
Crawford, 113 N. Y. 366, 21 N. E. 142. . . . .	106
Crerand, N. Y. L. J., June 30, 1914. . . . .	360
Crerar, 56 App. Div. 479, 67 Supp. 795. . . . .	461, 481
Crittenton, N. Y. L. J., April 5, 1911. . . . .	241
Crosby, 85 Misc. 679, 148 Supp. 1045. . . . .	218
Cruger, 54 App. Div. 405, 66 Supp. 636; aff. 166 N. Y. 602, 59 N. E. 1121. . . . .	148
Crusius, N. Y. L. J., February 26, 1914. . . . .	112, 416
Cullom, 76 Hun 610, 27 Supp. 1105; aff. 145 N. Y. 593, 40 N. E. 163. . . . .	22
Cummings, 142 App. Div. 377, 127 Supp. 109. . . . .	76
Curry, N. Y. L. J., May 27, 1914. . . . .	131, 312
Curtice, 111 App. Div. 230, 97 Supp. 444; aff. 185 N. Y. 543, 77 N. E. 1184. . . . .	346
Curtis, 31 Misc. 83, 64 Supp. 574. . . . .	331
Curtis, 142 N. Y. 219, 36 N. E. 887. . . . .	267
Curtiss, 9 App. Div. 285, 37 Supp. 586, 41 Supp. 1111. . . . .	387
Cushing, 40 Misc. 505, 82 Supp. 795. . . . .	320

## D

Dalsimer, 167 App. Div. 365, 153 Supp. 58; aff. 217 N. Y. 608. . . . .	197, 503
Daly, 34 Misc. 148, 69 Supp. 494. . . . .	449
Daly, 79 Misc. 586, 141 Supp. 199; aff. 215 N. Y. mem. . . . .	54, 238, 243
Daly, 100 App. Div. 373, 91 Supp. 858; aff. 182 N. Y. 524, 74 N. E. 1116. . . . .	99, 330
Daly, N. Y. L. J., July 28, 1916. . . . .	334, 369
Dammert v. Osborne, 141 N. Y. 564, 35 N. E. 1088. . . . .	23

Dana, 164 App. Div. 45, 149 Supp. 417; aff. 214 N. Y. 710..38, 131,	133, 148
Dana, 215 N. Y. 461, 109 N. E. 557.....112, 128, 131, 153, 232	
Daniell, 40 Misc. 29.....	138
Darrow v. Calkins, 154 N. Y. 503, 49 N. E. 61.....	332
Davenport, 67 App. Div. 191, 73 Supp. 653; aff. 172 N. Y. 454, 65	
N. E. 275.....	102
Davis, 91 Hun 53, 36 Supp. 822.....	283
Davis, 98 App. Div. 546, 90 Supp. 244; rev. 184 N. Y. 299, 77 N. E.	
259. . . . .	431, 451, 483, 484
Davis, 149 N. Y. 539, 44 N. E. 185.....	34, 69, 336
Day, 86 Misc. 131, 149 Supp. 221.....	256
De Graaf, 24 Misc. 147, 53 Supp. 591.....	186, 375, 520
Dee, 148 Supp. 423; aff. 161 App. Div. 881, 145 Supp. 1120; aff. 210	
N. Y. 625.....	114, 117
Dehnhardt, N. Y. L. J., April 7, 1916.....	712
DeLafield, N. Y. L. J., January 24, 1916.....	352
Delano, 176 N. Y. 486, 68 N. E. 871.....	175
Demarest, 157 Supp. 653.....	349
Demers, 41 Misc. 470, 24 Supp. 1109.....	141
De Peyster, 210 N. Y. 216.....	234, 235, 243
DeSala, N. Y. L. J., July 20, 1912.....	490
Deutsch, 107 App. Div. 192, 95 Supp. 65.....	55
Devlin v. Greenwich Bank, 125 N. Y. 756, 26 N. E. 744.....	451
De Voe, 107 App. Div. 245, 94 Supp. 1129.....	103
DeWolff, N. Y. L. J., February 24, 1913.....	475
Dickey, 174 App. Div. 467, 160 Supp. 646.....	282
Dimon, 82 App. Div. 107, 81 Supp. 428.....	379, 429, 459
Dingman, 66 App. Div. 228, 72 Supp. 694.....	526
Dobson, 73 Misc. 170, 132 Supp. 472.....	148, 150
Dolbeer, 226 N. Y. mem.....	157, 204
Dormitzer, N. Y. L. J., February 6, 1913.....	377
Doty v. Wilson, 47 N. Y. 580.....	105
Douglass, 171 Supp. 950.....	563
Douglass v. Hazen, 8 App. Div. 27, 40 Supp. 1012.....	262
Dows, 167 N. Y. 227, 60 N. E. 439.....	36, 175, 205, 691
Drake, 94 Misc. 70, 157 Supp. 270.....	466
Dreyfous, 18 Supp. 767, 28 Abb. N. C. 27.....	29
Dryer v. Reisman, 136 App. Div. 796.....	100
DuBois, 163 Supp. 668.....	333, 358
Dudley, N. Y. L. J., March 4, 1913.....	475
Duell v. Glynn, 191 N. Y. 357, 84 N. E. 282.....	524
Duffy, 127 App. Div. 74, 111 Supp. 77.....	112
Dunham v. City Trust Co., 115 App. Div. 584, 101 Supp. 87; aff. 193	
N. Y. 642, 86 N. E. 1123.....	414

Dun, 40 Misc. 509, 82 Supp. 802.....	367
Dunne, N. Y. L. J., May 25, 1914.....	122
Dunning, 48 Misc. 482, 96 Supp. 1110.....	101
Dupuy v. Wurtz, 53 N. Y. 556.....	214
Duryea, 128 App. Div. 205, 112 Supp. 611.....	230
Dusenberry, 2 State Dept. Rep. 501.....	333
Dwight, Edmund, N. Y. L. J., October 8, 1911; aff. 149 App. Div. 912, 133 Supp. 1119.....	130, 131
Dwight, J. H. B., N. Y. L. J., January 19, 1915.....	521
Dwight v. Gibb, 150 App. Div. 573, 135 Supp. 431.....	101

## E

Earle, 74 App. Div. 458, 77 Supp. 503.....	459, 509
Eaton, 55 Misc. 472, 62 Supp. 1026.....	506
Eaton, 79 Misc. 69, 140 Supp. 601.....	693
Ebbetts, 43 Misc. 575, 89 Supp. 544.....	102
Edgerton, 35 App. Div. 125, 54 Supp. 700; aff. 158 N. Y. 671, 52 N. E. 1124.....	114, 138, 427
Edson, 38 App. Div. 19, 56 Supp. 409; aff. 159 N. Y. 568, 54 N. E. 1092. ....	250
Edson v. Parsons, 85 Hun 263, 32 Supp. 1036; aff. 155 N. Y. 555, 50 N. E. 265.....	91
Egerton, 170 Supp. 222.....	203
Edwards, 85 Hun 436, 32 Supp. 901; aff. 146 N. Y. 380, 41 N. E. 89.	96
Eldridge, 29 Misc. 734, 62 Supp. 1026.....	197
Electro Tint Co. v. Amer. Hand Co., 130 App. Div. 561, 115 Supp. 34.	457
Elletson, 75 Misc. 582, 136 Supp. 455.....	538
Elting, 78 Misc. 692, 140 Supp. 238.....	168, 170, 331
Ely, 157 App. Div. 658, 142 Supp. 714.....	460
Ely, 149 Supp. 90.....	131, 383
Embury, 20 Misc. 75, 45 Supp. 821; aff. 19 App. Div. 214, 45 Supp. 881, 154 N. Y. 746, 49 N. E. 1096.....	74, 378, 404
Eno, N. Y. L. J., April 24, 1913.....	282
Enos, 61 Misc. 594.....	378
Enston, 113 N. Y. 174, 21 N. E. 87.....	53, 69, 450
Erbeling v. Erbeling, 61 Misc. 537, 115 Supp. 894.....	377
Ermann, 169 Supp. 207.....	529
Escoriaza, N. Y. L. J., November 15, 1914.....	137
Everett, 3 State Dept. Rep. 450.....	478
Eysel, 65 Misc. 432, 121 Supp. 1095.....	131

## F

Fairchild v. Fairchild, 64 N. Y. 471.....	356
Falk, 102 Misc. 504, 169 Supp. 203.....	237, 239

Fay, 25 Misc. 468, 55 Supp. 749.....	166, 169
Fayerweather, 143 N. Y. 114, 38 N. E. 278.....	53
Fearing, 138 App. Div. 881, 123 Supp. 396; aff. 200 N. Y. 340, 93 N. E. 956.....	184, 313
Field, 36 Misc. 279, 73 Supp. 512.....	278
Field, 71 Misc. 396, 130 Supp. 195; aff. 147 App. Div. 927, 131 Supp. 1114. ....	242
First National Bank v. Broadway National Bank, 156 N. Y. 459, 51 N. E. 398.....	457
Fisch, 34 Misc. 146, 69 Supp. 493.....	451
Fitch, 160 N. Y. 87, 54 N. E. 701.....	471
Fitzgibbon, 106 Misc. 130, 173 Supp. 898.....	123
Flatauer v. Loser, 211 N. Y. 16.....	467
Fleming, 48 Misc. 589, 98 Supp. 306.....	101
Flurschheim, N. Y. L. J., June 6, 1919.....	361
Foster, N. Y. L. J., January 16, 1916; aff. 174 App. Div. 864.....	186
Francis, N. Y. L. J., August 12, 1913; aff. 163 App. Div. 957, 148 Supp. 1116 .....	415
Francis, 121 App. Div. 129, 105 Supp. 643; aff. 189 N. Y. 554, 82 N. E. 1126.....	55, 243
Fraser, 92 N. Y. 239.....	187
Frazer v. People, 6 Dem. 174, 3 Supp. 134.....	524
Frazier, N. Y. L. J., March 28, 1912.....	185
Freedman v. Freedman, 4 Redf. 211.....	387
Freund, 143 App. Div. 335, 128 Supp. 48; aff. 202 N. Y. 556, 95 N. E. 1129. ....	386, 424
Friedlander, N. Y. L. J., March 8, 1911.....	430
Froelich, N. Y. L. J., April 30, 1913.....	475
Froment, N. Y. L. J., November 29, 1916.....	445
Frost, N. Y. L. J., May 1, 1914.....	351
Fuhrmann v. Von Pustau, 126 App. Div. 629, 111 Supp. 34.....	397
Fuller, 62 App. Div. 428, 71 Supp. 40.....	440, 474, 489
Fulton, 30 Misc. 70.....	509

## G

Gale, 83 Misc. 686, 145 Supp. 301.....	339, 449
Gannon v. McGuire, 160 N. Y. 476, 55 N. E. 7.....	109
Gans, N. Y. L. J., April 13, 1912.....	252
Garcia, 101 Misc. 387, 183 App. Div. 712, 170 Supp. 780..38, 39, 125, 233	
Garland, 88 App. Div. 380, 84 Supp. 630.....	689
Garvey v. Clifford, 114 App. Div. 193, 99 Supp. 555.....	112
Gates, 170 Supp. 299.....	510
Gegan v. Union Trust Co., 198 N. Y. 541, 92 N. E. 1085.....	106
Gibbs, 60 Misc. 645, 113 Supp. 939.....	489

Gibbes, 84 App. Div. 510, 83 Supp. 53; aff. 176 N. Y. 565, 68 N. E.	
1117. ....	313
Gibert, 176 App. Div. 850, 163 Supp. 974. ....	339, 343
Gibson, N. Y. L. J., March 3, 1914. ....	131
Gibson, 157 N. Y. 680, 58 N. E. 1090. ....	507
Gihon, 169 N. Y. 443, 62 N. E. 561. . . 14, 87, 253, 302, 383, 428, 527, 557	
Gilkinson v. Third Ave. R. R. Co., 47 App. Div. 472, 63 Supp. 792. . .	109
Gilsey, N. Y. L. J., March 10, 1914. ....	489
Glendinning, 68 App. Div. 125, 74 Supp. 190. ....	331
Godley v. Crandall & Godley Co., 153 App. Div. 697, 139 Supp. 236. .	367
Golden, N. Y. L. J., January 31, 1914. ....	519
Goodrich v. Rochester Trust and S. D. Co., 173 App. Div. 577, 160	
Supp. 454. ....	528
Gordon, 186 N. Y. 471, 79 N. E. 722. ....	164
Gordon, 172 N. Y. 25, 64 N. E. 753. ....	186
Gould, 19 App. Div. 352, 46 Supp. 506; mod. 156 N. Y. 423, 51 N. E.	
287. ....	90, 98, 344, 378, 380, 453, 454
Granfield, 79 Misc. 374, 140 Supp. 922. ....	258, 267
Grant, 86 Hun 617, 16 Supp. 716. ....	261, 262
Grant, 83 Misc. 257, 144 Supp. 567; aff. 166 App. Div. 921, 151	
Supp. 1119. ....	220, 444, 467
Graves, 171 N. Y. 40. ....	242
Gray v. Gray, 5 App. Div. 132, 39 Supp. 57. ....	185
Green, 153 N. Y. 223, 47 N. E. 292. ....	111, 127, 148, 153, 223
Green, 144 App. Div. 232, 129 Supp. 54. ....	189, 196
Green, 184 App. Div. 376, 171 Supp. 494. ....	451, 699
Green, Hettie R., 99 Misc. 582; aff. 179 App. Div. 890. ....	219, 223, 455
Greenwood v. Holbrook, 111 N. Y. 465, 18 N. E. 711. ....	93
Griggs, 163 Supp. 1096. ....	519
Griswold v. Griswold, 4 Bradf. 216. ....	385
Griswold v. Sawyer, 125 N. Y. 411, 26 N. E. 468. ....	172
Grosser v. City of Rochester, 148 N. Y. 235. ....	195
Grosvenor, 124 App. Div. 331, 108 Supp. 926, 126 App. Div. 953, 111	
Supp. 1121; aff. 193 N. Y. 652, 86 N. E. 1124. ....	395
Guggenheim, 189 N. Y. 561, 82 N. E. 1127. ....	267
Guggenheim, N. Y. L. J., July 29, 1916. ....	353
Gulick, N. Y. L. J., March 20, 1914. ....	278
Gumbinner, 92 Misc. 104, 155 Supp. 188. ....	313

## H

Hackett, 14 Misc. 282, 35 Supp. 1051. ....	524
Hadley, 43 Misc. 579, 89 Supp. 545. ....	102
Haight, 152 App. Div. 228, 136 Supp. 557. ....	179
Haggerty, 128 App. Div. 479, 112 Supp. 1017; aff. 194 N. Y. 550, 87	
N. E. 1120. ....	179

Haley, 89 Misc. 22, 152 Supp. 732.....	712
Hall, 54 Hun 637, 7 Supp. 595.....	521
Hall, 36 Misc. 618, 73 Supp. 1124.....	265
Halle, 103 Misc. 661, 170 Supp. 898.....	149, 358, 360
Halligan, 82 Misc. 30, 143 Supp. 676.....	112
Hallock, 42 Misc. 493, 87 Supp. 255.....	308
Hamilton, 148 N. Y. 310, 42 N. E. 717.....	244
Hamilton, 41 Misc. 268, 84 Supp. 44.....	512
Hamlin, 185 App. Div. 183; aff. 226 N. Y. 407.....	17, 562
Hamlin v. Smith, 72 App. Div. 601, 76 Supp. 258.....	429
Hanford, 113 App. Div. 894; aff. 186 N. Y. 547.....	521
Harbeck, 161 N. Y. 211, 55 N. E. 850.....	35, 174
Hardner, 124 App. Div. 77.....	226
Harkness, 183 App. Div. 396, 170 Supp. 1024.....	221
Harris v. Murray, 28 N. Y. 547.....	397
Hart, 98 Misc. 515, 162 Supp. 716; rev. 179 App. Div. 29, 166 Supp. 188; aff. 222 N. Y. 660.....	447, 448
Hartley v. Eagle Ins. Co., 222 N. Y. 178.....	284
Hatch v. Bassett, 52 N. Y. 359.....	260
Hathaway, 103 Misc. 360, 171 Supp. 190.....	270, 281
Hathaway, 27 Misc. 474.....	471
Hauser, 166 Supp. 1079.....	203
Havemeyer, 32 Misc. 416, 66 Supp. 722.....	353
Hawes, 162 App. Div. 173, 147 Supp. 329; aff. 221 N. Y. 613.....	132
Hayes v. Meyer, 35 N. Y. 226.....	397
Head, N. Y. L. J., December 22, 1911.....	475
Heaton on Surrogates' Courts.....	220
Hearn, N. Y. L. J., July, 1917.....	371
Hellman, 174 N. Y. 254, 66 N. E. 809.....	331, 367
Hellman, 172 Supp. 671; aff. 226 N. Y. mem.....	149, 354, 358, 360
Hemmerich v. Union Dime S. I., 205 N. Y. 366, 98 N. E. 499.....	105
Henderson, 157 N. Y. 423, 52 N. E. 183.....	510
Hendricks, 3 Supp. 281.....	459
Hendricks, 163 App. Div. 413, 148 Supp. 511; aff. 214 N. Y. 663....	110
Hermanni, N. Y. L. J., January 16, 1915; aff. 168 App. Div. mem., 153 Supp. 1119.....	231
Hernandez, 172 App. Div. 467, 159 Supp. 59; aff. 219 N. Y. mem....	208
	216, 464, 467, 503
Hess, 110 App. Div. 476, 96 Supp. 990; aff. 187 N. Y. 554, 80 N. E. 1111. . . . .	114, 138
Hewitt, 181 N. Y. 547, 74 N. E. 1118.....	36, 330, 425
Higgins, N. Y. L. J., December 16, 1914.....	241
Higgins, 55 Misc. 175, 106 Supp. 465.....	242
Hiles v. Fisher, 144 N. Y. 306, 39 N. E. 337.....	191, 192, 195
Hillman, 116 App. Div. 186.....	316

Hinrichs, 148 Supp. 912.....	187
Hirsch, 83 Misc. 681, 145 Supp. 305.....	377
Hirschbuerg, N. Y. L. J., November 20, 1914.....	360
Hitchins, 43 Misc. 485, 89 Supp. 472; aff. 181 N. Y. 553, 74 N. E. 1118. ....	266
Hodges, 86 Misc. 367; aff. 215 N. Y. 447, 109 N. E. 559.....	39, 124 126, 153, 231
Hoffman, 42 Misc. 90, 85 Supp. 1082.....	385
Hoffman, 143 N. Y. 327, 38 N. E. 311.....	267, 689
Hoffman, 161 App. Div. 836, 146 Supp. 898; aff. 212 N. Y. 604.....	179
Hogg, 156 App. Div. 301, 141 Supp. 119.....	232
Holly v. Gibbons, 176 N. Y. 520, 68 N. E. 889.....	429
Holmes v. Roper, 141 N. Y. 64, 36 N. E. 180.....	105
Holt, N. Y. L. J., March 16, 1912.....	695
Hoople, 179 N. Y. 308, 72 N. E. 229.....	517
Hosack, 39 Misc. 130, 78 Supp. 983.....	281
Horler, 97 Misc. 587, 161 Supp. 957.....	192
Horn, 39 Misc. 133, 78 Supp. 979.....	165
Horstman v. Flege, 172 N. Y. 384, 65 N. E. 202.....	187
Horton, 217 N. Y. 363, 111 N. E. 1066.....	75, 466
Houdayer, 150 N. Y. 37, 44 N. E. 718.....	27, 314, 316, 329, 508
Houseman, 182 App. Div. 37.....	113
Howard, 54 Hun 305, 7 Supp. 594.....	521
Howard, 94 Misc. 560, 157 Supp. 1114.....	244
Howe, 86 App. Div. 286, 83 Supp. 825; aff. 176 N. Y. 570, 68 N. E. 1118. ....	278
Howe, 112 N. Y. 100, 19 N. E. 513.....	519, 688
Howell, 34 Misc. 40, 69 Supp. 505.....	242
Hoyt, 86 Misc. 696, 149 Supp. 91.....	131, 383
Hoyt, 44 Misc. 76, 89 Supp. 744.....	256
Hubbard, 103 Misc. 125, 169 Supp. 325.....	337, 460, 527
Huber, 86 App. Div. 458, 83 Supp. 769.....	527
Huber v. Case, 93 App. Div. 479, 87 Supp. 663.....	357
Hughes v. Golden, 44 Misc. 128, 89 Supp. 765.....	245
Hull, 111 App. Div. 322, 97 Supp. 701; aff. 186 N. Y. 586, 79 N. E. 1107. ....	184
Hull, 109 App. Div. 248, 95 Supp. 819.....	440, 443, 474
Hulse, 15 Supp. 770.....	138
Hunt, 97 Misc. 233, 160 Supp. 1115.....	338
Hunt v. Hunt, 72 N. Y. 217.....	219
Hunt v. Kingston, 3 Misc. 309, 23 Supp. 352.....	101
Hurcomb, 36 Misc. 755, 74 Supp. 475.....	328, 353
Hurst, 111 App. Div. 460, 97 Supp. 697.....	428
Hutchinson, 105 App. Div. 487, 94 Supp. 354.....	258



Hutter, N. Y. L. J., December 3, 1914; aff. 167 App. Div. 930, 152 Supp. 1119 .....	381
Hutton, 176 App. Div. 217, 160 Supp. 223; aff. 220 N. Y. 210..275, 481, 691	
Hyde, 218 N. Y. 55.....	490
Hyman, N. Y. L. J., May 22, 1914.....	349
Hynes v. McDermot, 82 N. Y. 41.....	387

## I

Irish, 28 Misc. 467.....	303
Irwin, 36 Misc. 277, 73 Supp. 415.....	482
Isham v. N. Y. Assn. for Poor, 177 N. Y. 218, 69 N. E. 367.....	254, 501

## J

Jackson v. Tailer, 41 Misc. 36; aff. 96 App. Div. 625, 184 N. Y. 603..	253
James, 144 N. Y. 6, 38 N. E. 961.....	26, 322, 398
Janda v. Bohemian R. C. U., 71 App. Div. 150, 75 Supp. 656.....	171
Jay v. Kirkpatrick, 26 Misc. 550.....	424
Johnson, 37 Misc. 542, 75 Supp. 1046.....	489, 513
Jones, 54 Misc. 202, 105 Supp. 932.....	69, 511
Jones, 28 Misc. 356, 59 Supp. 983, 69 App. Div. 237, 74 Supp. 702, 172 N. Y. 575, 65 N. E. 570.....	351, 359
Joseph v. Herzog, 198 N. Y. 456, 92 N. E. 103.....	396
Jourdan, 151 App. Div. 8, 135 Supp. 172; rev. (on dissenting opinion below) 206 N. Y. 653.....	693

## K

Kahn, N. Y. L. J., March 16, 1912.....	426
Keahon, 60 Misc. 508, 113 Supp. 926.....	359, 368
Kearney, N. Y. L. J., May 4, 1905.....	102
Keefe, 164 N. Y. 352.....	423, 507
Keenan, 22 St. Rep. 79, 5 Supp. 200.....	441
Keeney, 194 N. Y. 281, 87 N. E. 428; aff. 222 U. S. 525....	38, 53, 61, 127 139, 147, 148, 205
Kelly, 29 Misc. 169, 60 Supp. 1005.....	241, 474
Kelsey v. Church, 112 App. Div. 408, 98 Supp. 535.....	441, 522
Kemp, 7 App. Div. 609, 40 Supp. 1144; aff. 151 N. Y. 619, 45 N. E. 1132. ....	338, 376
Kene, 8 Misc. 102, 29 Supp. 1078.....	375
Kennedy, 20 Misc. 531, 46 Supp. 906.....	392, 457
Kennedy, 93 App. Div. 27, 86 Supp. 1024.....	267
Kennedy, David, 113 App. Div. 4, 99 Supp. 72.....	417, 450, 451, 453
Kennedy, 155 Supp. 192.....	345
Kennedy, J. S., N. Y. L. J., March 8, 1911.....	347
Kennedy, Thos. J., N. Y. L. J., August 11, 1915.....	380

Kent's Commentaries, vol. 2, p. 348.....	106
Keough, 42 Misc. 387, 86 Supp. 807.....	391
Kernochan, 104 N. Y. 618, 11 N. E. 149.....	426
Kettle v. Baxter, 50 Misc. 428, 100 Supp. 529.....	230
Keys, N. Y. L. J., March 15, 1912.....	186
Kidd, 188 N. Y. 274, 80 N. E. 924.....	87, 90, 141
Kimbel v. Kimbel, 14 App. Div. 570, 43 Supp. 900.....	185
Kimberly, 150 N. Y. 90, 44 N. E. 945.....	250, 443
King, 217 N. Y. 358, 111 N. E. 1060.....	180, 226
King, 71 App. Div. 581, 76 Supp. 220; aff. 172 N. Y. 616, 64 N. E. 1122.....	392, 394, 397
King, 51 Misc. 375, 101 Supp. 279.....	106
Kings County Trust Co., 69 Misc. 531, 127 Supp. 879.....	386, 428
Kip, N. Y. L. J., March 28, 1912.....	693
Kirtland, 94 Misc. 58, 157 Supp. 378.....	229, 395
Kissel, 65 Misc. 443, 121 Supp. 1088; aff. 142 App. Div. 134, 127 Supp. 1127.....	184
Kitching v. Shear, 26 Misc. 436.....	245
Klatzl, 216 N. Y. 83, 110 N. E. 181.....	192, 196
Klauber, N. Y. L. J., May 17, 1913; aff. 171 App. Div. 908, 218 N. Y. 607.....	370
Kline, 65 Misc. 445, 121 Supp. 1090.....	132
Knabe, N. Y. L. J., February 2, 1916.....	186
Knoedler, 140 N. Y. 377, 35 N. E. 601.....	158, 164, 306
Konvalinka v. Schlegel, 104 N. Y. 125, 9 N. E. 868.....	185
Kubler, N. Y. L. J., August 6, 1915.....	526
Kucielski, 144 App. Div. 100, 128 Supp. 768.....	22, 243

## L

LaFarge, 149 Supp. 535.....	392
Lane, 157 App. Div. 694, 142 Supp. 788.....	29
Lane, 39 Misc. 522, 80 Supp. 381.....	450
Langdon, 153 N. Y. 6, 46 N. E. 1034.....	267
Lansing, 31 Misc. 148, 64 Supp. 1125.....	474, 481
Lansing, 182 N. Y. 238, 74 N. E. 882.....	176, 178, 691
Lawrence, N. Y. L. J., February 15, 1913.....	451
Lawrence, 96 App. Div. 29, 88 Supp. 1028.....	460
Lawson, N. Y. L. J., January 3, 1914.....	283
Laytin v. Davidson, 95 N. Y. 263.....	390
Leask, 130 App. Div. 898, 197 N. Y. 193, 90 N. E. 652.....	229
Leask v. Hoagland, 64 N. Y. 159.....	377
Leeds, N. Y. L. J., June 2, 1914.....	96
Leggett, N. Y. L. J., January 13, 1911.....	426
Leggett v. Stevens, 77 App. Div. 612, 79 Supp. 289.....	261
Lehr v. Jones, 74 App. Div. 54, 77 Supp. 213.....	105

Lennox, N. Y. L. J., June 11, 1908.....	305
Leopold, 35 Misc. 369, 71 Supp. 1032.....	317
Leuff, 1 State Dept. Rep. 567.....	478
Levy, N. Y. L. J., May 15, 1907; aff. 122 App. Div. 919, 107 Supp. 1134. ....	379
Lewis, 129 App. Div. 908, 194 N. Y. 550, 88 N. E. 1124.....	179
Lewis v. Smith, 9 N. Y. 502.....	187
Lewis v. State, 96 N. Y. 71.....	517
Lewisohn, 171 Supp. 958.....	281
Lind, 132 App. Div. 321, 117 Supp. 49; aff. 196 N. Y. 570, 90 N. E. 1161. ....	207
Linley, N. Y. L. J., February 19, 1914.....	483
Liss, 39 Misc. 123, 78 Supp. 969.....	379, 385
Livingston, 1 App. Div. 568, 37 Supp. 463.....	338, 375
Locke v. State, 140 N. Y. 480, 35 N. E. 476.....	517
Loeb, 167 App. Div. 588, 152 Supp. 879.....	235, 238
Loeb, N. Y. L. J., January 13, 1914.....	340
Loewi, 75 Misc. 57, 134 Supp. 679.....	107, 451
Logan v. Whitley, 129 App. Div. 666, 114 Supp. 255.....	140
Lord, 111 App. Div. 152, 97 Supp. 553; aff. 186 N. Y. 549, 79 N. E. 1110. ....	279, 404
Lorillard v. People, 6 Dem. 268.....	307
Loster, N. Y. L. J., July 19, 1913.....	475
Lowenfeld, N. Y. L. J., June 27, 1916.....	333
Lowndes, 60 Misc. 506, 113 Supp. 1114.....	471
Lowry, 89 Misc. 226, 85 Supp. 924.....	491, 513
Ludeke, N. Y. L. J., January 30, 1914.....	698
Ludlow, 4 Misc. 594, 25 Supp. 989.....	379
Lynn, 34 Misc. 681, 70 Supp. 730.....	443
Lyon, 144 App. Div. 104, 128 Supp. 1004.....	241

## Mc

McAvoy, 112 App. Div. 377, 98 Supp. 437.....	243
McCarthy, 5 Misc. 276, 25 Supp. 987.....	524
McCartin, N. Y. L. J., December 5, 1913.....	241
McClusky v. Cromwell, 11 N. Y. 593.....	54
McCormick, 206 N. Y. 100, 99 N. E. 177.....	238
McCullough, N. Y. L. J., October 27, 1914.....	215
McDougall, 141 N. Y. 21.....	261, 262
McDowell, 217 N. Y. 454.....	236
McElroy on the "Transfer Tax Law".....	338, 415, 459
McEwan, 51 Misc. 455, 101 Supp. 733.....	398
McFarlane v. McFarlane, 82 Hun 238, 31 Supp. 272.....	356
McGarvey, 6 Dem. 145.....	230
McGee, N. Y. L. J., February 7, 1913; aff. 160 App. Div. 890, 144 Supp. 1127 .....	527

McGovern, N. Y. L. J., March 26, 1903.....	102
McGruer v. Abbott, 47 App. Div. 191, 62 Supp. 123.....	505
McGuire v. Murphy, 107 App. Div. 104, 94 Supp. 1005.....	109
McKelway, 221 N. Y. 15, 116 N. E. 348.....	57, 173, 192, 201, 204
McLean, N. Y. L. J., July 18, 1914; 170 Supp. 224.....	278, 281
McMillan, 126 App. Div. 155, 110 Supp. 622.....	101
McMullen, 92 Misc. 637, 157 Supp. 655.....	349
McMurray, 96 App. Div. 128, 89 Supp. 71.....	431
McPherson, 104 N. Y. 306, 10 N. E. 685.....	42, 49, 64, 404, 445

# M

Maguire, 99 Misc. 466.....	205
Mahlstedt, 67 App. Div. 176, 73 Supp. 818; aff. 171 N. Y. 652, 63 N. E. 1119.....	116
Majot, 199 N. Y. 29, 92 N. E. 402.....	209
Malcolmson, N. Y. L. J., June 20, 1912.....	346
Manning, 169 N. Y. 449, 62 N. E. 565.....	483, 484
Maresi, 74 App. Div. 76, 77 Supp. 76.....	257, 375, 385
Marks, 40 Misc. 507, 82 Supp. 803.....	383
Marsh, 5 Misc. 428, 26 Supp. 718.....	101
Marshing, N. Y. L. J., March 6, 1907.....	526
Martin, 173 App. Div. 1, 158 Supp. 915; appeal dismissed 219 N. Y. 557, 114 N. E. 1071.....	213, 214, 507
Martinez, 160 Supp. 1121.....	186
Marx, 117 App. Div. 890, 103 Supp. 446.....	527
Mason, 120 App. Div. 738, 105 Supp. 667; aff. sub nom. Naylor, 189 N. Y. 556, 82 N. E. 1129.....	266, 482
Mason, 69 Misc. 280, 126 Supp. 998.....	712
Masury, 28 App. Div. 580; aff. 159 N. Y. 532, 53 N. E. 1127.....	132
Mather, 90 App. Div. 382, 85 Supp. 657; aff. 179 N. Y. 526, 71 N. E. 1134.....	33, 513
Matthews v. Brooklyn Sav. Bank, 208 N. Y. 508, 102 N. E. 520.....	111
Maverick, 135 App. Div. 44, 119 Supp. 914; aff. 198 N. Y. 618, 92 N. E. 1084.....	379, 427
Menagh v. Whitehall, 52 N. Y. 146.....	332
Mergentime, 129 App. Div. 367, 113 Supp. 948; aff. 195 N. Y. 572, 88 N. E. 1125.....	55, 235, 242
Merriam, 141 N. Y. 479, 36 N. E. 505; aff. 163 U. S. 625, 16 Sup. Ct. Rep. 1073.....	22, 243
Merritt, 155 App. Div. 228, 140 Supp. 13.....	33, 230
Meserole, 98 Misc. 105, 162 Supp. 414.....	131, 231, 266
Meyer, 83 App. Div. 381, 82 Supp. 329.....	29
Meyer, 209 N. Y. 386, 103 N. E. 713.....	36, 339, 527
Meyer, N. Y. L. J., January 31, 1914.....	521
Michaelis, N. Y. L. J., August 11, 1915.....	377

Middleworth v. Ordway, 191 N. Y. 404, 84 N. E. 291.....	91
Miller, 77 App. Div. 473, 78 Supp. 930.....	137
Miller, 110 N. Y. 216, 18 N. E. 139.....	57, 449
Miller v. Miller, 91 N. Y. 315.....	100
Mills, 86 App. Div. 555, 67 Supp. 956; aff. 177 N. Y. 562, 69 N. E. 1127. . . . .	85, 247
Mills, 172 App. Div. 530, 158 Supp. 1100; aff. 219 N. Y. mem. . . . .	108, 113 122, 456, 490
Millward, 6 Misc. 425, 27 Supp. 286.....	379
Milne, 76 Hun 328, 27 Supp. 727.....	520, 688
Mitchell, N. Y. L. J., March 9, 1912.....	453
Mitchell, N. Y. L. J., November 22, 1913.....	180
Mock, 113 App. Div. 913, 49 Misc. 283.....	689
Moebus, 178 App. Div. 709, 165 Supp. 887.....	195
Moench, 39 Misc. 480, 80 Supp. 222.....	57
Moller v. Lincoln, S. D. Co., 174 App. Div. 458.....	414
Montieth, 27 Misc. 163, 58 Supp. 379.....	512
Moore, 90 Hun 62, 35 Supp. 782.....	69, 519
Moore, 97 Misc. 238, 162 Supp. 213.....	341, 365
Morgan, Annie C., 164 App. Div. 854, 149 Supp. 1022; aff. 215 N. Y. mem. . . . .	446, 512
Morgan, Annie T., 36 Misc. 753, 74 Supp. 478.....	459
Morgan, Geo., 150 N. Y. 35, 44 N. E. 1126.....	315, 318
Morgan, 95 Misc. 451, 159 Supp. 105.....	216
Morgan v. Cowie, 49 App. Div. 612, 63 Supp. 608.....	430
Morgan v. Warner, 45 App. Div. 424, 60 Supp. 963; aff. 162 N. Y. 612, 57 N. E. 1118.....	377, 443
Morss, 85 Misc. 676, 149 Supp. 41.....	461
Moses, 138 App. Div. 525, 123 Supp. 443.....	234, 242
Moulton, 11 Misc. 694, 33 Supp. 578.....	229
Mowry, 114 App. Div. 904, 100 Supp. 1131.....	482
Mullon, 74 Hun 358, 26 Supp. 683.....	359
Murphy, 32 App. Div. 627, 53 Supp. 1110; aff. 157 N. Y. 679, 51 N. E. 1092.....	338, 375
Murphy, 4 Misc. 230, 25 Supp. 107.....	250
Murray, 92 Misc. 100, 155 Supp. 185.....	86, 93
Mutual Life Ins. Co. v. Nicholas, 144 App. Div. 95, 128 Supp. 902...	456
Myers, N. Y. L. J., November 22, 1913.....	253

## N

Naylor, 189 N. Y. 556, 82 N. E. 1129.....	482
Neher, 95 Misc. 68, 158 Supp. 454.....	258
Neustadter, N. Y. L. J., August 16, 1913.....	239
Newcomb, 71 App. Div. 606, 76 Supp. 222; aff. 172 N. Y. 608, 64 N. E. 1123.....	320, 426

Newcomb, 192 N. Y. 238, 84 N. E. 950.....	214
Newman, 91 Misc. 200, 154 Supp. 1107.....	352, 453
Nichol, 91 Hun 134, 36 Supp. 538.....	228
Nichols, 60 Misc. 299, 113 Supp. 277.....	102
Niles, N. Y. L. J., January 5, 1912.....	695
Niven, 29 Misc. 550, 61 Supp. 956.....	512
Norton, 96 Misc. 152, 159 Supp. 619; aff. 175 App. Div. 981, 162 Supp. 1133 .....	221

## O

O'Berry, 91 App. Div. 3, 86 Supp. 269; aff. 179 N. Y. 285, 72 N. E. 109. ....	266, 511
O'Connell, 33 App. Div. 483.....	104
O'Donohue, 44 App. Div. 186, 59 Supp. 1087, 60 Supp. 690.....	440
Offerman, 25 App. Div. 94, 48 Supp. 993.....	308, 309, 338, 375
Ogden, 170 Supp. 630.....	270, 701
Ogsbury, 7 App. Div. 71, 39 Supp. 987.....	128
Olcott v. Baldwin, 190 N. Y. 90, 82 N. E. 748.....	390
O'Neil, 91 N. Y. 593.....	59
Ormiston, N. Y. L. J., August 14, 1915.....	371
Orvis, 173 App. Div. 1, 166 Supp. 126; aff. 223 N. Y. 1, 119 N. E. 88. ....	143, 147, 156, 205, 354
Otis, 103 Misc. 665.....	728
Ottman, 166 Supp. 1078.....	359, 460
Overheiser v. Lackey, 207 N. Y. 229.....	197

## P

Page, N. Y. L. J., April 13, 1912.....	330
Page, 39 Misc. 220, 79 Supp. 382.....	100
Palm, 148 Supp. 1044.....	112
Palmer, John, 117 App. Div. 360, 102 Supp. 236.....	108, 450, 451
Palmer, Potter, 183 N. Y. 238, 76 N. E. 16.....	323
Palmer, S. A. L., 33 App. Div. 307, 53 Supp. 847; aff. 158 N. Y. 669, 52 N. E. 1125.....	241
Pancost, 89 Misc. 110, 152 Supp. 724.....	350
Park, 8 Misc. 550, 29 Supp. 1081.....	521
Parker, 226 N. Y. 260.....	270
Parmenter v. State, 135 N. Y. 154, 31 N. E. 1035.....	518
Parsons, 39 Misc. 126, 78 Supp. 975.....	262
Parsons, 51 Misc. 370, 101 Supp. 430, 117 App. Div. 321, 102 Supp. 168. ....	168, 331, 353
Paterno, 182 App. Div. 478, 169 Supp. 765.....	337, 343
Patterson, 146 N. Y. 327, 40 N. E. 990.....	468
Patterson, 146 App. Div. 286, 130 Supp. 970; aff. 204 N. Y. 677.....	128

Paul, 165 Supp. 413; aff. 181 App. Div. 932.....	456
Pearsall, 149 Supp. 36.....	524
Peck, 53 Misc. 535, 109 Supp. 1083.....	101
Peck, 149 App. Div. 912, 133 Supp. 1136.....	450
Peck, 2 Connolly 201, 9 Supp. 465.....	382
Pell, 171 N. Y. 48, 63 N. E. 789.....	35, 40, 173, 201, 266
Penfold, W. H., 216 N. Y. 171, 110 N. E. 499.....	336, 384
Penfold, Josephine, 216 N. Y. 163, 110 N. E. 497.....	37, 334
People v. Coleman, 107 N. Y. 541, 14 N. E. 431.....	345
People v. Dennison, 84 N. Y. 272.....	517
People ex rel. Farrington v. Meusching, 187 N. Y. 10.....	43
People ex rel. Eismann v. Ronner, 185 N. Y. 285.....	42
People ex rel. Hatch v. Reardon, 184 N. Y. 531.....	42, 322
People ex rel. Lown v. Cook, 158 App. Div. 74, 142 Supp. 692; aff. 209 N. Y. 578.....	520, 523
People ex rel. McKnight v. Glynn, 56 Misc. 35, 106 Supp. 956.....	440
	442, 443
People ex rel. McNeile v. Glynn, 128 App. Div. 257, 112 Supp. 695...	440
People ex rel. Ripley v. Williams, 69 Misc. 402, 127 Supp. 749.....	523
People ex rel. U. S. A. P. P. Co. v. Knight, 174 N. Y. 475, 67 N. E. 65. ....	21
People v. Feitner, 167 N. Y. 1, 60 N. E. 265.....	160
People v. Mercantile S. D. Co., 159 App. Div. 98, 143 Supp. 849.....	412
People v. Prout, 53 Hun 541, 6 Supp. 457.....	518
People v. Roberts, 159 N. Y. 70, 53 N. E. 685.....	359
People v. State Tax Commission, 174 App. Div. 320, 160 Supp. 854..	312
Perry, 129 App. Div. 587, 114 Supp. 246.....	105
Peters, 69 App. Div. 465, 74 Supp. 1028.....	443
Pettit, 65 App. Div. 30, 72 Supp. 469; aff. 171 N. Y. 654, 63 N. E. 1121. ....	40
Phalen v. U. S. Trust Co., 186 N. Y. 178, 78 N. E. 943.....	88
Phipps, 77 Hun 325, 28 Supp. 330; aff. 143 N. Y. 641, 37 N. E. 823..	251
Pitou, 79 Misc. 384, 140 Supp. 919.....	347
Platt, 8 Misc. 144, 29 Supp. 396.....	520
Plum, 37 Misc. 466, 75 Supp. 740.....	270
Polhemus, 84 Misc. 332, 145 Supp. 1107.....	140
Porter, 67 Misc. 19, 124 Supp. 676; aff. 148 App. Div. 896, 132 Supp. 1143. ....	392, 395, 397
Post, 85 App. Div. 611, 82 Supp. 1079.....	504
Post, 5 App. Div. 113, 38 Supp. 977.....	488
Post, 96 Misc. 531.....	259
Potter, 51 App. Div. 512, 64 Supp. 1013.....	175
Potter, 139 App. Div. 905, 124 Supp. 1126; aff. 199 N. Y. 561, 93 N. E. 378.....	264
Powell v. Waldron, 89 N. Y. 328.....	331

Prentiss, N. Y. L. J., December 2, 1916.....	376
Preston, 75 App. Div. 250, 78 Supp. 91.....	317
Preston v. Fitch, 137 N. Y. 41, 33 N. E. 77.....	332
Price, 62 Misc. 149, 116 Supp. 283.....	117
Price, McCormick Co., 69 App. Div. 37, 74 Supp. 624.....	398
Prime, 136 N. Y. 347, 32 N. E. 1091.....	74, 241
Probst, 40 Misc. 431, 82 Supp. 396.....	357
Proctor, 41 Misc. 79, 83 Supp. 643.....	343, 452
Prote, 54 Misc. 495, 104 Supp. 301.....	101
Purdy, 24 Misc. 301, 53 Supp. 735.....	428
Pulitzer, N. Y. L. J., December 10, 1912.....	366
Pullman, 46 App. Div. 574, 62 Supp. 395.....	324, 352

## R

Radford, 168 Supp. 1099.....	208
Raimbouville, N. Y. L. J., July 27, 1916.....	396
Raleigh, 75 Misc. 55, 134 Supp. 684.....	456
Ramsdill, 190 N. Y. 492, 83 N. E. 584.....	29, 399
Ray, 13 Misc. 480, 35 Supp. 481.....	231
Read, 204 N. Y. 672.....	518
Reed, 98 Misc. 102, 162 Supp. 412.....	96, 382
Rees, 208 N. Y. 590.....	351
Reeves on Real Property, Vol. II, p. 689.....	191
Reinhardt v. Reinhardt, 134 App. Div. 440, 119 Supp. 285.....	396
Remsen v. Wheeler, 105 N. Y. 573, 12 N. E. 564.....	409
Reynolds, 97 Misc. 555, 163 Supp. 803.....	483
Rhoades, 120 App. Div. 822; aff. 190 N. Y. 525, 83 N. E. 1130.....	164
Rice, 56 App. Div. 253, 61 Supp. 911, 68 Supp. 1147.....	379, 459, 481
Richards, 182 App. Div. 572; aff. 226 N. Y. mem.....	697
Ridden v. Thrall, 125 N. Y. 572, 26 N. E. 627.....	114
Riemann, 42 Misc. 648, 87 Supp. 731.....	186
Riley, 86 Misc. 628, 148 Supp. 623.....	215
Ripley, 122 App. Div. 419, 106 Supp. 844; aff. 192 N. Y. 536, 84 N. E. 1120.....	179
Robins v. McClure, 100 N. Y. 328, 3 N. E. 663.....	190
Robinson, 37 Misc. 336, 75 Supp. 490.....	386
Robinson, 80 Misc. 458, 142 Supp. 456; aff. 212 N. Y. 548.....	239
Rockefeller, 177 App. Div. 786, 165 Supp. 154; aff. 223 N. Y. 563... 234, 484, 490	55,
Rockwell v. Gregory, 4 Hun 606.....	100
Roebuck, 79 Misc. 589, 140 Supp. 1107.....	226
Roessle v. Roessle, 81 Misc. 558, 142 Supp. 984.....	187
Rogers, 71 App. Div. 461, 75 Supp. 835; aff. 172 N. Y. 617, 64 N. E. 1125. . . . .	99, 175
Rogers, 149 Supp. 462.....	259



Rogers, 83 App. Div. 642, 82 Supp. 1113; aff. N. Y. L. J., January 24, 1903 .....	217
Romaine, 127 N. Y. 80.....	317
Rook, 98 Misc. 544, 164 Supp. 742.....	414
Roos, 90 Misc. 521, 154 Supp. 939.....	351
Roosevelt, 143 N. Y. 120, 38 N. E. 281.....	266
Rosenbaum, N. Y. L. J., August 7, 1913.....	312
Rosenberg, N. Y. L. J., May 9, 1908, 114 Supp. 726.....	366
Rosendahl, 40 Misc. 542, 82 Supp. 992.....	689
Rothfeld, N. Y. L. J., January 4, 1914.....	405
Rothschild, 86 Misc. 364, 148 Supp. 368.....	217
Rothschild, 63 Misc. 615, 118 Supp. 654.....	428
Rowe, 103 Misc. 111, 170 Supp. 742.....	30, 102
Rudolph, 92 Misc. 347, 156 Supp. 825.....	112
Runcie, 36 Misc. 607, 73 Supp. 1120.....	260
Rundel, 179 App. Div. 978.....	117
Russell, 168 N. Y. 169, 61 N. E. 166.....	190
Russell, N. Y. L. J., June 1, 1914.....	131
Russell, 148 Supp. 272.....	387
Russell v. McCall, 141 N. Y. 437, 36 N. E. 498.....	332
Rutherford, 88 Misc. 414, 150 Supp. 734.....	216
Ryan, 3 Supp. 136.....	58, 69

## S

Sandahl, 171 Supp. 959.....	358
St. John v. Andrews Institute, 191 N. Y. 254, 83 N. E. 981.....	240
Sanford, 66 Misc. 395, 123 Supp. 284.....	382
Sanford v. Jackson, 10 Paige 266.....	185
Sauer, 89 Misc. 105, 151 Supp. 465.....	100
Saunders, 86 Misc. 582, 149 Supp. 461.....	507
Saunders, 77 Misc. 54, 137 Supp. 438; aff. 211 N. Y. 541... 238, 390,	428
Savage v. Burnham, 17 N. Y. 561.....	187
Savage v. O'Neil, 44 N. Y. 298.....	387
Schermerhorn, 38 App. Div. 350, 57 Supp. 26.....	481
Schermerhorn, N. Y. L. J., June 26, 1913.....	131
Schmidt, 39 Misc. 77, 78 Supp. 879.....	446
Schumacher, N. Y. L. J., March 13, 1914.....	489
Schumacher, N. Y. L. J., July 29, 1914.....	519
Schutz v. Morette, 146 N. Y. 137, 40 N. E. 780.....	429
Schwarz, 156 App. Div. 931, 141 Supp. 349; aff. 209 N. Y. mem.....	693
Scott, 208 N. Y. 602.....	510
Seringeour, 80 App. Div. 388, 80 Supp. 636; aff. 175 N. Y. 507, 67 N. E. 1089.....	474, 511
Seabury v. Bowen, 3 Bradf. 207.....	385
Seaman, 147 N. Y. 69, 41 N. E. 401.....	29, 267

Seaver, 63 App. Div. 283, 71 Supp. 544.....	175, 471
Secor v. Tradesmen's National Bank, 92 App. Div. 241.....	332
Seligman, 170 App. Div. 837, 156 Supp. 648; aff. 219 N. Y. 141.....	282
Seymour, 144 App. Div. 151, 128 Supp. 775.....	505
Sharer, 36 Misc. 502, 73 Supp. 1057.....	106, 454
Shearson, 174 App. Div. 866; aff. 220 N. Y. 584.....	269, 481
Sherar, 25 Misc. 138, 54 Supp. 930.....	509
Sheridan v. Tucker, 145 App. Div. 145, 129 Supp. 18.....	456
Sherill v. Christ Church, 121 N. Y. 701, 25 N. E. 50.....	58
Sherman, 153 N. Y. 1, 46 N. E. 1032.....	21
Sherman, 179 App. Div. 497; aff. 222 N. Y. 540.....	383, 558
Sherwell, 125 N. Y. 376, 26 N. E. 464.....	16
Shields, 68 Misc. 264, 124 Supp. 1003.....	428
Silkman, 121 App. Div. 202, 105 Supp. 872.....	359, 360, 368, 373
Silliman, 79 App. Div. 98, 80 Supp. 336; aff. 175 N. Y. 513, 67 N. E. 1090.....	428, 511
Simmons, N. Y. L. J., June 14, 1912.....	477
Simon v. Etgen, 213 N. Y. 589.....	453
Simpson v. Jersey City Contracting Co., 165 N. Y. 193.....	322, 324
Skinner, 45 Misc. 559, 92 Supp. 972; mod. 106 App. Div. 217, 94 Supp. 144.....	148, 150, 334, 336, 376, 429, 519, 520
Slater v. Slater, 175 N. Y. 143, 67 N. E. 224.....	366
Sloane, 154 N. Y. 107, 47 N. E. 978.....	39
Slosson, 87 Misc. 517, 149 Supp. 797; aff. 168 App. Div. 891, 152 Supp. 690; rev. 216 N. Y. 79, 110 N. E. 166.....	99, 179, 263
Smith, 14 Misc. 169, 35 Supp. 701.....	297
Smith, 85 Misc. 636, 149 Supp. 24.....	253
Smith, Albert D., N. Y. L. J., March 4, 1914.....	698
Smith, E. H., 40 App. Div. 480, 58 Supp. 128.....	475
Smith, E. H., 71 App. Div. 602, 76 Supp. 185.....	349
Smith, Johnathan, 150 App. Div. 805, 135 Supp. 240.....	266
Smith, Julia A., 77 Hun 134.....	241
Smith, W. A., 80 Misc. 140, 141 Supp. 798.....	86
Smith v. Browning, 171 App. Div. 279, 157 Supp. 71; rev. 225 N. Y. 358.....	244
Smith v. Cornell, 111 N. Y. 554, 19 N. E. 271.....	385
Smith v. Kearney, 2 Bart. Ch. 533.....	377
Solley v. Westcott, 43 Misc. 188, 88 Supp. 297.....	260
Somerville, 20 Supp. 76.....	105
Sondheim, 69 App. Div. 5, 74 Supp. 510.....	440, 504
Spaulding, 49 App. Div. 541, 63 Supp. 694; aff. 163 N. Y. 607, 57 N. E. 1124.....	114, 116, 137
Spencer, 190 N. Y. 517, 83 N. E. 1132, 193 N. Y. 613.....	179
Spingarn, 96 Misc. 141, 159 Supp. 605; rev. 175 App. Div. 806, 162 Supp. 695.....	277, 473, 478

Starbuck, 63 Misc. 156, 116 Supp. 1030; aff. 201 N. Y. 531, 94 N. E. 1098. . . . .	189, 196
State v. Kings County, 125 N. Y. 312. . . . .	73
Steele, 98 Misc. 180, 162 Supp. 718. . . . .	381, 386, 390
Steinwender, 172 App. Div. 871, 158 Supp. 779; aff. 121 N. Y. mem. . . . .	481, 504
Stelz v. Shreek, 128 N. Y. 263, 28 N. E. 510. . . . .	194, 195
Sterry, N. Y. L. J., April 30, 1912. . . . .	252
Stewart, 131 N. Y. 274, 30 N. E. 184. . . . .	54, 267, 404
Stickney, 185 N. Y. 107, 77 N. E. 993. . . . .	508
Stiger, 7 Misc. 268, 28 Supp. 163. . . . .	247
Stiles, 64 Misc. 658, 120 Supp. 714. . . . .	391
Stilwell, 34 Supp. 1123. . . . .	228
Stockwell, 158 Supp. 320. . . . .	96
Stone, 56 Misc. 247, 107 Supp. 385. . . . .	483
Stone, N. Y. L. J., February 18, 1911. . . . .	450
Strail, 195 N. Y. 575. . . . .	244
Strang, 117 App. Div. 796, 102 Supp. 1062. . . . .	57, 244
Straus, N. Y. L. J., October 9, 1911. . . . .	356
Strobel, 39 Supp. 169; aff. 5 App. Div. 621. . . . .	80
Stuart v. Palmer, 74 N. Y. 188. . . . .	404
Stuyvesant, 72 Misc. 295, 131 Supp. 197. . . . .	187
Sudds, 32 Misc. 182, 66 Supp. 231. . . . .	526
Sullivan, 94 Misc. 529, 159 Supp. 616. . . . .	197
Sutton, 3 App. Div. 208, 38 Supp. 277; aff. 149 N. Y. 618, 44 N. E. 1128. . . . .	308, 309, 338, 375, 424
Swarthout v. Ranier, 143 N. Y. 499. . . . .	262
Swift, 137 N. Y. 77, 32 N. E. 1096. . . . .	85, 307, 308, 423, 459

## T

Telfeyan, N. Y. L. J., January 31, 1917. . . . .	239
Teller, 178 App. Div. 450, 165 Supp. 517; appeal dismissed 223 N. Y. 565. . . . .	203, 204, 507
Terry, 218 N. Y. 218, 112 N. E. 931. . . . .	274, 278, 282
Terry v. Rector St. S. Church, 79 App. Div. 527, 81 Supp. 119. . . . .	262
Thayer, 193 N. Y. 430, 86 N. E. 462. . . . .	323
Thomas, 3 Misc. 388, 24 Supp. 713. . . . .	332
Thomas, 33 Misc. 729, 68 Supp. 1116. . . . .	190
Thomas, 39 Misc. 223, 79 Supp. 571. . . . .	428
Thomas v. Wolford, 49 Hun 145, 1 Supp. 610. . . . .	262
Thompson, 57 App. Div. 317, 68 Supp. 18. . . . .	443, 489
Thompson, 81 Misc. 86. . . . .	454
Thompson, 85 Misc. 291, 147 Supp. 157, 167 App. Div. 356, 153 Supp. 164; aff. 217 N. Y. 609. . . . .	197, 452
Thompson, 14 St. Rep. 487. . . . .	69

Thorne, 44 App. Div. 8, 60 Supp. 419; appeal dismissed 162 N. Y.	
238. ....	114, 138, 507
Thrall, 157 N. Y. 46, 51 N. E. 411. ....	382
Thurber v. Townsend, 22 N. Y. 517. ....	189
Tiedemann on Real Property, 2d ed., § 237. ....	191
Tilden v. Green, 130 N. Y. 29, 28 N. E. 880. ....	236
Tiffany, 143 N. Y. 327, 128 Supp. 106; aff. 202 N. Y. 550. ....	314, 316
Tilley, 166 App. Div. 240, 151 Supp. 79; aff. 215 N. Y. 702. ....	196, 197
Tillinghast, Louise, 94 Misc. 50, 157 Supp. 382; aff. 184 App. Div. 886.	280
Tillinghast, William H., 94 Misc. 76, 157 Supp. 379; aff. 184 App.	
Div. 886. ....	281, 521
Title Guarantee and Trust Co., 81 Misc. 106, 142 Supp. 1070; mod.	
159 App. Div. 803. ....	233
Tollman, 104 Misc. 696, 172 Supp. 294. ....	701
Tompkins, N. Y. L. J., August 11, 1913. ....	280
Tompkins v. Fanton, 3 Dem. 4. ....	261
Totten, 179 N. Y. 112, 71 N. E. 748. ....	111
Townsend, 215 N. Y. 442. ....	238, 451, 515
Tracy, 86 Supp. 1024. ....	483
Tracy, 179 N. Y. 501, 72 N. E. 519. ....	257
Travis, 19 Misc. 393, 44 Supp. 349. ....	489
Trelease, 49 Misc. 207, 96 Supp. 318; aff. 115 App. Div. 645. ....	262
Tremberger, N. Y. L. J., October 3, 1913. ....	375
Tucker, 27 Misc. 616, 59 Supp. 699. ....	280
Tuigg, 15 Supp. 548, 2 Connolly 633. ....	377
Turner, 82 Misc. 25, 143 Supp. 692. ....	453
Tuttle, N. Y. L. J., June 9, 1914. ....	389
Twenty-Third Street Baptist Church, 117 N. Y. 601, 23 N. E. 177. ....	105

# U

Ullmann, 137 N. Y. 403, 33 N. E. 480. ....	441, 443
Underhill, 20 Supp. 134, 2 Connolly 462. ....	382
U. S. Trust Co., 117 App. Div. 178, 102 Supp. 271; aff. 189 N. Y.	
500, 81 N. E. 1177. ....	112
U. S. Trust Co. v. Hart, 150 App. Div. 413, 135 Supp. 81; aff. 208	
N. Y. 617, 102 N. E. 1115. ....	215

# V

Valentine, 147 Supp. 231. ....	347
Valentine, 88 Misc. 397, 150 Supp. 732. ....	478
Valentine, M. A., N. Y. L. J., June 22, 1915. ....	475
Valentine, 163 App. Div. 843, 147 Supp. 1146. ....	349
Vallance v. Bausch, 28 Barb. 633. ....	190
Van Blaricum v. Larson, 146 App. Div. 278, 130 Supp. 925; aff. 205	
N. Y. 355. ....	187

Van Brocklen v. Smeallie, 140 N. Y. 70, 35 N. E. 415.....	356
Vanderbilt, 50 App. Div. 246, 63 Supp. 1079; aff. 163 N. Y. 597, 57 N. E. 1127.....	175, 202
Vanderbilt, 68 App. Div. 27, 74 Supp. 450.....	428
Vanderbilt, 172 N. Y. 69, 64 N. E. 782.....	14, 204, 206, 267
Vanderbilt (A. G.), 184 App. Div. 661; aff. 226 N. Y. mem.....	91
Vanderbilt (G. W.), 104 Misc. 511, 175 Supp. 863.....	375
Van Cott, 180 App. Div. 814, 168 Supp. 95.....	126, 152
Van Dermoor, 42 Hun 326.....	170
Van Kleeck, 121 N. Y. 701, 25 N. E. 50.....	57
Vanneck, 175 App. Div. 363, 161 Supp. 893.....	279, 389
Van Nest, N. Y. L. J., November 8, 1913; aff. 168 App. Div. mem....	513
Van Pelt, 63 Misc. 616, 118 Supp. 65.....	386
Van Rensselaer, N. Y. L. J., October 11, 1912.....	387
Vassar, 127 N. Y. 1, 27 N. E. 394.....	36, 425
Vernon v. Vernon, 53 N. Y. 351.....	187
Vietor, 160 App. Div. 32, 144 Supp. 918.....	504
Vinot, 7 Supp. 517.....	379
Vivanti, 63 Misc. 618, 118 Supp. 680; rev. 138 App. Div. 281, 122 Supp. 954; appeal dismissed 204 N. Y. 513.....	311, 354, 359, 367, 507
Vivanti (second appeal), 146 App. Div. 942, 131 Supp. 1148; aff. 206 N. Y. 656.....	77, 186, 311
Van Au v. Magenheimer, 115 App. Div. 84, 100 Supp. 659.....	361, 368
Von Au v. Magenheimer (second appeal), 126 App. Div. 257, 110 Supp. 629 .....	373
Von Bernuth, 103 Misc. 521, 171 Supp. 764.....	442
Von Post, 35 Misc. 367, 71 Supp. 1039.....	517
Voorhees, 165 Supp. 537.....	701
Voorhees, 103 Misc. 515, 171 Supp. 859.....	171

## W

Wadd v. Hazelton, 137 N. Y. 215, 33 N. E. 143.....	107
Wadheim v. Hancock, 8 Misc. 506, 28 Supp. 766.....	190
Wadsworth, 166 Supp. 716.....	451
Wagener, 143 App. Div. 286, 128 Supp. 164.....	30
Wall, 105 App. Div. 643, 94 Supp. 1166.....	317
Wallace, 71 App. Div. 284, 75 Supp. 838.....	444
Wallace, 149 Supp. 354.....	357
Wallace, 28 Misc. 603, 59 Supp. 1084.....	513
Walworth, 66 App. Div. 171, 72 Supp. 984.....	175
Warden, 94 Misc. 563, 157 Supp. 1111.....	185
Warner v. Fourth National Bank, 115 N. Y. 251, 22 N. E. 172.....	324
Warren, 62 Misc. 444, 116 Supp. 1034.....	180
Washburn on Real Estate, 8th ed., Vol. I, p. 529.....	191
Watson, 171 N. Y. 256, 63 N. E. 1109.....	239

Watson, 226 N. Y. 384.....	7, 42, 717
Weatherbee, 157 Supp. 652.....	349
Weatherbee, N. Y. L. J., November 5, 1913.....	358
Webber, 151 App. Div. 539, 136 Supp. 83.....	38, 131
Weed, 10 Misc. 628, 32 Supp. 777.....	525
Weeks v. Kraft, 147 App. Div. 403, 132 Supp. 228.....	440, 441
Weiler, 122 Supp. 608; aff. 139 App. Div. 905, 124 Supp. 1133.....	185
Wendel, 223 N. Y. 433, 119 N. E. 877.....	181, 279
Weston v. Goodrich, 86 Hun 194, 33 Supp. 382.....	474
Westurn, 152 N. Y. 93, 46 N. E. 315.....	334, 336, 380, 383, 428 459, 484, 490
Wheeler, 1 Misc. 450, 22 Supp. 1075.....	229
Wheeler, 115 App. Div. 616, 100 Supp. 1044.....	226
Wheelright v. Rhodes, 28 Hun 57.....	387
White, 116 App. Div. 183.....	454
White, 118 App. Div. 169, 103 Supp. 688.....	234, 235, 243
White, 208 N. Y. 64, 101 N. E. 793.....	14, 31, 205, 265
Whitewright, 87 Misc. 34, 89 Misc. 97, 151 Supp. 241.....	441, 447
Whiting, 150 N. Y. 27, 44 N. E. 715.....	212, 312, 319
Whiting, 69 Misc. 526, 127 Supp. 960; aff. 200 N. Y. 520.....	453
Wilcox, 118 Supp. 254.....	248, 514
Williams, 31 App. Div. 617, 52 Supp. 710.....	391
Williams, N. Y. L. J., October 2, 1914.....	385
Williams v. Guile, 117 N. Y. 343, 22 N. E. 1071.....	117
Williams v. Whedon, 109 N. Y. 333, 16 N. E. 365.....	354, 393
Willets, 119 App. Div. 119, 100 Supp. 850, 104 Supp. 1150; aff. 190 N. Y. 527, 83 N. E. 1134.....	339, 510
Willmer, 75 Misc. 62, 134 Supp. 686; aff. 153 App. Div. 804, 138 Supp. 649 .....	323, 349
Winters, 21 Misc. 552, 48 Supp. 1097.....	445
Winthrop, 164 App. Div. 898, 148 Supp. 1151; aff. 214 N. Y. 712....	232
Wintjen, 99 Misc. 471, 165 Supp. 927.....	203
Wise, 84 Misc. 663, 146 Supp. 789; rev. 165 App. Div. 420, 150 Supp. 782 .....	218
Wolcott, 94 Misc. 73, 157 Supp. 268.....	310
Wolfe, 66 Hun 389, 21 Supp. 515.....	69
Wolfe, 137 N. Y. 205, 33 N. E. 156.....	445, 460, 482
Wolfe, 23 Misc. 439, 52 Supp. 415.....	241
Wolfe, 89 App. Div. 349, 85 Supp. 949; aff. 179 N. Y. 599, 72 N. E. 1152. ....	32, 93, 248
Wood, 91 App. Div. 3, 86 Supp. 269.....	521
Wood, 68 Misc. 267, 123 Supp. 574.....	246
Wood, 40 Misc. 155, 81 Supp. 511.....	377
Woolsey, N. Y. L. J., June 5, 1915.....	242
Woolsey, 19 Abb. N. C. 232.....	230

Wormser, 51 App. Div. 441, 64 Supp. 897.....	357, 379, 483, 520
Wormser, 102 Misc. 501, 169 Supp. 206.....	196
Wright, 89 Misc. 108, 151 Supp. 378.....	507
Wright, 214 N. Y. 714, 108 N. E. 1112.....	70, 71, 269, 320
Wunsch, N. Y. L. J., January 24, 1913.....	475

## Y

Yerkes, N. Y. L. J., December 5, 1912.....	392
Yung v. Blake, 163 App. Div. 501, 148 Supp. 557.....	189

## Z

Zborowski, 84 Misc. 342, 145 Supp. 1101; rev. 213 N. Y. 109....	240, 259
	267, 271, 481
Zefita, 167 N. Y. 280, 60 N. E. 598.....	251, 332, 337
Ziegler, 168 App. Div. 735, 154 Supp. 652; aff. 218 N. Y. 544.....	389
Zittlsperger, 170 App. Div. 615, 156 Supp. 571.....	274
Zortlein v. Bram et al., 100 N. Y. 12, 2 N. E. 388.....	194

## ARKANSAS

Clarkson, 188 S. W. 834.....	319
McDaniel v. Byrnett, 120 Ark. 295, 179 S. W. 491.....	185
McDaniel v. Hearn, 120 Ark. 288, 179 S. W. 337.....	231
State v. Handline, 100 Ark. 175, 139 S. W. 1112.....	9
State ex rel. McDaniel v. Guban, 124 Ark. 584, 187 S. W. 918.....	181
State v. Lane, 203 S. W. 17.....	186
State v. Branch, 200 S. W. 809.....	446

## CALIFORNIA

Abstract and Title Guarantee Co. v. State, 173 Cal. 691, 161 Pac.	
264.....	118, 155
Becker v. Nye, 8 Cal. Dec. 129.....	522
Rowen, 94 Pac. 1055.....	69
Bull, 153 Cal. 715, 96 Pac. 366.....	55
Chambers v. Gallagher, 171 Pac. 931.....	72, 517
Chambers v. Gibson, 173 Pac. 752.....	517
Chesney, 1 Cal. App. 30, 81 Pac. 679.....	381
Cross v. Superior Court, 2 Cal. App. 342, 83 Pac. 815.....	524
Damon, 10 Cal. App. 542, 102 Pac. 684.....	61
Felton's Estate, 176 Cal. 663, 169 Pac. 392.....	39, 59, 124, 155, 346
Fishe's Estate, 172 Pac. 390.....	233
Fair, 128 Cal. 607, 61 Pac. 184.....	314, 318

Gurnsey's Estate, 170 Pac. 402.....	202
Harkness, 54 Cal. Dec. 602, 54 Cal. Dec. 810, 169 Pac. 78.....	509
Hancock v. Ross, 50 Cal. Dec. 304.....	452
Hite, 159 Cal. 392, 113 Pac. 1072.....	37
Hodges, 50 Cal. Dec. 15.....	24
Hunt v. Wicht, 174 Cal. 205, 162 Pac. 639.....	38, 59, 109
Johnson, 139 Cal. 532, 73 Pac. 424.....	43, 77
Kelly v. Woolzey, 170 Pac. 837.....	124
Kennedy, 157 Cal. 517, 108 Pac. 280.....	34, 188
Lander, 6 Cal. App. 744, 93 Pac. 202.....	70, 469
Mahoney, 133 Cal. 180, 65 Pac. 389.....	77
McCahill, 171 Cal. 482, 153 Pac. 930.....	314, 318, 470
McDougald v. Boyd, 172 Cal. 753, 159 Pac. 168.....	156, 197
McDougald v. Low, 164 Cal. 107, 127 Pac. 1027.....	319, 393
McDougald v. Wulzen, 34 Cal. App. 31, 166 Pac. 1033.....	123, 481
Moffitt, 153 Cal. 359, 95 Pac. 653, 1025.....	207
Nickel v. State, 175 Pac. 641.....	156, 246
Pryor v. Winter, 147 Cal. 554, 82 Pac. 202.....	74
Reynolds, 169 Cal. 600, 147 Pac. 268.....	114, 119, 154
Rossi, 49 Cal. Dec. 60.....	96
Spreckles, 30 Cal. App. 363, 158 Pac. 549.....	114, 120
Stanford, 126 Cal. 112, 54 Pac. 259, 58 Pac. 462.....	31, 58, 60, 70
Stewart's Estate, 174 Cal. 547, 163 Pac. 902.....	188
Trippet v. State, 149 Cal. 521, 86 Pac. 1084.....	65, 70, 445
Williams, 23 Cal. App. 285, 137 Pac. 1067.....	384
Wilmerding, 117 Cal. 281, 49 Pac. 181.....	9
Winchester, 140 Cal. 468, 74 Pac. 10.....	227
Wirringer v. Morgan, 12 Cal. App. 26, 106 Pac. 425.....	61, 226
Woodard, 153 Cal. 39, 94 Pac. 242.....	34

### COLORADO

Brown v. Elder, 32 Colo. 527, 77 Pac. 853.....	9
County Court v. Watson, 51 Colo. 405, 118 Pac. 974.....	440
Germania Life Ins. Co. v. Ross-Lewin, 24 Colo. 43, 51 Pac. 488.....	66
Magnes, 32 Colo. 527, 77 Pac. 853.....	16
Macky, 45 Colo. 316, 101 Pac. 334.....	16, 19
People v. Koenig, 37 Colo. 283, 85 Pac. 1129.....	74
People v. Rice, 40 Colo. 508, 91 Pac. 33.....	97
Re Inheritance Tax, 23 Colo. 492, 48 Pac. 535.....	17
Walker v. People, 171 Pac. 747.....	9, 314

### CONNECTICUT

Bishop v. Bishop, 81 Conn. 509, 71 A. 583.....	255
Bridgport Land Co., 77 Conn. 657, 60 A. 662.....	423



Corbin v. Baldwin, 92 Conn. 99, 101 A. 834.....	10, 18, 56, 239, 384, 385
Corbin v. Townshend, 92 Conn. 501, 103 A. 647.....	384, 561
Gallup, 76 Conn. 617, 57 A. 699.....	307, 526
Hopkins, 77 Conn. 644, 60 A. 657.....	10, 18, 24, 416, 525
Nettleton, 76 Conn. 235, 56 A. 565.....	17
Robertson v. Wilcox, 36 Conn. 426.....	326
Sherman v. Moore, 89 Conn. 190, 93 A. 241.....	254
Warner v. Corbin, 91 Conn. 532, 100 A. 354.....	337

## FLORIDA

Pace v. Pace, 19 Fla. 438.....	172
--------------------------------	-----

## GEORGIA

Farkas v. Smith, 147 Ga. 573, 94 S. E. 1016.....	7, 10, 65
Martin v. Pollock, 87 S. E. 793.....	445
Parish v. Adams, 95 S. E. 749.....	525

## IDAHO

Kohny v. Dunbar, 121 Pac. 544.....	208
State v. Dunlap, 28 Idaho 784, 156 Pac. 1141.....	321

## ILLINOIS

Adams v. Akelund, 168 Ill. 632, 48 N. E. 544.....	79, 81
Ayres v. Chicago Title and Trust Co., 187 Ill. 42, 58 N. E. 318.....	269
Benton, 234 Ill. 366, 84 N. E. 1026.....	117
Billings v. People, 189 Ill. 472, 59 N. E. 798.....	188
Connell v. Crosby, 210 Ill. 380, 71 N. E. 350.....	69, 85, 188, 247, 308 382, 518
Davis v. Upson, 230 Ill. 327, 82 N. E. 824.....	213
Graves, 242 Ill. 212, 89 N. E. 978.....	94, 242
Hanberg v. Morgan, 263 Ill. 616, 105 N. E. 720.....	334, 446, 524
Kochersperger v. Drake, 167 Ill. 122, 47 N. E. 321.....	10
Lorenz v. Weller, 267 Ill. 230, 108 N. E. 306.....	525
Merrifield v. People, 212 Ill. 400, 72 N. E. 446.....	115
National S. D. Co. v. Stead, 250 Ill. 584, 95 N. E. 973.....	31, 413
North Trust Co. v. Buck, 263 Ill. 222, 104 N. E. 1114.....	22
Oakman v. Small, 282 Ill. 360, 118 N. E. 775.....	74, 224, 321, 466, 528
People v. Blair, 115 N. E. 218.....	321, 330
People v. Bauder, 271 Ill. 446, 111 N. E. 598.....	85
People v. Burkhalter, 247 Ill. 600, 93 N. E. 379.....	119
People v. Carpenter, 264 Ill. 400, 106 N. E. 302.....	65
People v. Cuyler, 276 Ill. 72, 114 N. E. 494.....	321
People v. Dennett, 276 Ill. 43, 114 N. E. 493.....	321

People v. Donohue, 276 Ill. 88, 114 N. E. 513.....	270
People v. Field, 248 Ill. 147.....	188
People v. Forsyth, 273 Ill. 141, 112 N. E. 378.....	188
People v. Freese, 267 Ill. 164, 107 N. E. 857.....	259
People v. Griffith, 245 Ill. 532, 92 N. E. 313.....	53, 224, 318, 319, 322
People v. Kellogg, 268 Ill. 489, 109 N. E. 304.....	240, 307, 399, 448
People v. Kelly, 218 Ill. 509, 75 N. E. 1038.....	116, 130
People v. Lefens, 269 Ill. 472, 109 N. E. 965.....	454
People v. Moir, 207 Ill. 180, 69 N. E. 905.....	213, 214
People v. Nelms, 241 Ill. 571, 89 N. E. 683.....	188
People v. Northern Trust Co., 266 Ill. 139, 107 N. E. 190.....	502
People v. Orendorf, 262 Ill. 246, 104 N. E. 656.....	139
People v. Passfield, 220 N. E. 286.....	384
People v. Phelps, 78 Ill. 147.....	172
People v. Richardson, 269 Ill. 275, 109 N. E. 1033.....	206
People v. Raymond, 188 Ill. 454, 59 N. E. 7.....	521
People v. Schaefer, 266 Ill. 334, 107 N. E. 617.....	250
People v. Sholem, 244 Ill. 502, 91 N. E. 704.....	334, 417
People v. Starring, 274 Ill. 289, 113 N. E. 627.....	270, 481
People v. Western Seaman's Society, 87 Ill. 246.....	233
Provident Hospital v. People, 198 Ill. 495, 64 N. E. 1031.....	57, 69
Rosenthal v. People, 211 Ill. 306, 71 N. E. 1121.....	116, 118
Speed, 216 Ill. 23, 74 N. E. 806; aff. 203 U. S. 553, 27 S. Ct. Rep. 171.	233
Ullmann, 263 Ill. 528, 105 N. E. 292.....	53
Walker v. People, 192 Ill. 106, 61 N. E. 489.....	344

## INDIANA

Conway's Estate, 120 N. E. 717.....	10, 53, 115
Crittenberger v. State, 114 N. E. 225.....	501
Nye v. Grand Lodge A. O. U. W., 9 Ind. App. 131, 36 N. E. 429.....	158
State v. Smith, 158 Ind. 543.....	21
Wilson v. Donaldson, 117 Ind. 356, 20 N. E. 250.....	74

## IOWA

Anderson, 166 Ia. 617.....	79
Brown v. Daly, 172 Ia. 379, 154 N. W. 602.....	79
Brown v. Guilford, 165 N. W. 99.....	125, 131
Crawford, 148 Ia. 60, 126 N. W. 774.....	233
Culver, 145 Ia. 1, 123 N. W. 743.....	320
Ferry v. Campbell, 110 Ia. 290, 81 N. W. 604.....	39, 50, 64, 65, 445
Gilbertson v. Ballard, 125 Ia. 420, 101 N. W. 108.....	57
Gilbertson v. McAuley, 117 Ia. 522, 91 N. W. 788.....	712
Gilbertson v. Oliver, 129 Ia. 568, 105 N. W. 1002.....	314
Herriot v. Bacon, 110 Ia. 342, 81 N. W. 701.....	712

Herriot v. Potter, 115 Ia. 645, 89 N. W. 91.....	41
Hoyt v. Keegan, 167 N. W. 521.....	329
Hulett, 121 Ia. 423, 96 N. W. 592.....	251
Lacy v. State Treasurer, 152 Ia. 477, 132 N. W. 843.....	40, 57
Lamb v. Morrow, 140 Ia. 89, 117 N. W. 1118.....	128, 130
Lewis v. Brown, 166 N. W. 99.....	125
McGhee v. State, 105 Ia. 9, 74 N. W. 695.....	10, 337
McKeown v. Brown, 167 Ia. 489, 149 N. W. 593.....	79
Montgomery v. Gilbertson, 134 Ia. 291, 111 N. W. 964.....	41
Morrow v. Durant, 140 Ia. 437, 118 N. W. 781.....	380
Morrow v. Smith, 145 Ia. 514, 124 N. W. 316.....	242
Peterson, 166 N. W. 168.....	233
Spangler, 148 Ia. 333, 127 N. W. 625.....	56, 242
Stone, 132 Ia. 136, 109 N. W. 455.....	93, 248, 411
Weaver v. State, 110 Ia. 328, 81 N. W. 603.....	312
Wells, 142 Ia. 255, 120 N. W. 713.....	94
Wieting v. Morrow, 151 Ia. 590, 132 N. W. 193.....	16

## KANSAS

Life Ins. v. Hill, 51 Kan. 636, 33 Pac. 300.....	159
Nelson v. Schoonhover, 89 Kan. 779, 132 Pac. 1183.....	89
State v. A., T. & St. F. R. Co., 99 Kan. 831, 163 Pac. 157.....	73
State v. Davis, 88 Kan. 849, 129 Pac. 1197.....	26
State v. Mollier, 96 Kan. 514, 152 Pac. 771.....	90, 98, 378
State v. Gerhard, 99 Kan. 462, 162 Pac. 1149.....	89, 517
State v. U. S. Trust Co. of N. Y., 99 Kan. 841, 163 Pac. 156.....	174

## KENTUCKY

Allen v. McElroy, 130 Ky. 111, 113 S. W. 66.....	67
Barrett v. Continental Realty Co., 130 Ky. 109, 114 S. W. 750.....	470
Booth v. Commonwealth, 130 Ky. 88, 113 S. W. 61.....	10, 41
Commonwealth v. Gaulfest, 134 Ky. 157, 119 S. W. 779.....	381
Commonwealth v. McCauley's Executor, 166 Ky. 450, 179 S. W. 411.....	35, 38
Commonwealth v. Peebles, 134 Ky. 121, 119 S. W. 774.....	25, 225
Commonwealth v. Stoll, 132 Ky. 234, 114 S. W. 279, 116 S. W. 687..	181
Ewald's Executor v. City of Louisville, 189 S. W. 458.....	319
Kenton Ins. Co. v. Covington, 86 Ky. 213.....	159
Leavell v. Arnold, 131 Ky. 426, 115 S. W. 232.....	16, 233
Mandel v. Fidelity Trust Co., 128 Ky. 239, 107 S. W. 775.....	245, 247
Richter v. Commonwealth, 180 Ky. 4, 201 S. W. 456.....	527
Sevier's Exrs. v. Commonwealth, 181 Ky. 49, 203 S. W. 1070....	337, 501
Winn v. Schenck, 33 Ky. L. Rep. 615, 110 S. W. 827.....	174

## LOUISIANA

Arnaud v. Arnaud, 3 La. Ann. 337.....	17
Baker, 55 So. 714.....	208
Crusius, 19 La. Ann. 369.....	80
Kohn, 115 La. 71, 38 So. 898.....	11
Frain, 141 La. 932, 75 So. 847.....	237
Frigalo, 123 La. 71, 48 So. 652.....	71
Fell, 119 La. Ann. 1037, 44 So. 879.....	52
Harrow, 140 La. 570, 73 So. 683.....	224
Marsal, 118 La. Ann. 212, 42 So. 778.....	208
Pritchard, 118 La. Ann. 836, 43 So. 537.....	52
Pargoud, 13 La. Ann. 367.....	527
Quessart v. Canouge, 3 La. 560.....	69
Rabasse, 49 La. Ann. 1405, 22 So. 767.....	80
Ribet, 141 La. 572, 75 So. 414.....	237
Rixner, 18 La. Ann. 552, 19 So. 597.....	80
Sala, 50 La. Ann. 1009, 24 So. 674.....	81
Schaffer, 13 La. Ann. 113.....	80
Stauffer, 119 La. Ann. 66, 43 So. 928.....	80
Westfeld, 122 La. Ann. 836, 48 So. 281.....	52, 59, 307

## MAINE

Lombard, 88 Me. 587, 34 A. 530.....	40
Luques, 114 Me. 235, 95 A. 1021.....	180
State v. Hamlin, 86 Me. 495, 30 A. 76.....	4, 11, 43

## MARYLAND

Citizens' Bank v. Sharp, 53 Md. 521.....	331
Fisher v. State, 106 Md. 104, 66 A. 661.....	175
Helser v. State, 128 Md. 228, 97 A. 539.....	315
Montague v. State, 27 Md. 481.....	58, 527
Owings v. State, 22 Md. 116.....	33
State v. Dalrymple, 70 Md. 294, 17 A. 82.....	11, 25
State v. S. D. & T. Co. of Baltimore, 103 A. 435.....	35, 41
Tyson v. State, 28 Md. 577.....	16
Wingert v. State, 125 Md. 536, 94 A. 166.....	339, 441

## MASSACHUSETTS

Atty.-Gen. v. Barney, 211 Mass. 134, 97 N. E. 750.....	66
Atty.-Gen. v. Clark, 222 Mass. 291, 110 N. E. 299.....	197, 199
Atty.-Gen. v. Rafferty, 209 Mass. 321, 95 N. E. 747.....	469
Atty.-Gen. v. Roche, 219 Mass. 601, 107 N. E. 667.....	447
Atty.-Gen. v. Skehill, 217 Mass. 364, 104 N. E. 748.....	524

Atty.-Gen. v. Stone, 209 Mass. 186, 95 N. E. 395.....	469
Atty.-Gen. v. Thorpe, 119 N. E. 171.....	178
Batt v. Treasurer, 209 Mass. 459, 95 N. E. 854.....	94, 244
Bliss v. Bliss, 221 Mass. 201, 109 N. E. 148.....	81, 315
Bradford v. Storey, 189 Mass. 104, 75 N. E. 256.....	518
Bretton v. Fox, 100 Mass. 234.....	67
Bride v. Clark, 161 Mass. 130.....	77
Burnham v. Treasurer, 212 Mass. 165, 98 N. E. 603.....	178, 691
Callahan v. Woodridge, 171 Mass. 595.....	401
Clark v. Swartzenberg, 162 Mass. 98, 38 N. E. 17.....	172
Clark v. Treasurer, 218 Mass. 292, 105 N. E. 1055.....	91, 183
Crocker v. Shaw, 174 Mass. 266, 54 N. E. 549.....	135
Cushing v. Aylwin, 12 Mete. 169.....	134
Custance v. Bradshaw, 4 Hare 315.....	309
Dana v. Dana, 226 Mass. 297, 115 N. E. 818.....	18
Dana v. Treasurer, 227 Mass. 562, 116 N. E. 941.....	225, 333
Electric Welding Co. v. Prince, 200 Mass. 368.....	76
Ely v. James, 123 Mass. 36.....	77
Emmons v. Shaw, 171 Mass. 410, 50 N. E. 1033.....	174
Essex v. Brooks, 164 Mass. 79, 41 N. E. 119.....	242
First Universalist Society v. Bradford, 185 Mass. 310, 70 N. E. 204...	241
Flagg v. Bradford, 181 Mass. 315.....	517
Frothingham v. Shaw, 175 Mass. 59, 55 N. E. 623.....	23
Gardner v. Burrill, 225 Mass. 355, 114 N. E. 617.....	185
Greves v. Shaw, 173 Mass. 205, 53 N. E. 372.....	24, 225, 311, 320, 401
Hackett v. Potter, 135 Mass. 349.....	77
Hill v. Treasurer, 227 Mass. 331, 116 N. E. 509.....	34, 89
Hill v. Atty.-Gen., 118 N. E. 891.....	263
Hooper v. Bradford, 178 Mass. 95, 59 N. E. 678.....	309, 400, 417
Hooper v. Shaw, 176 Mass. 190, 57 N. E. 361.....	384, 559
Howe v. Howe, 179 Mass. 546, 61 N. E. 225.....	264, 309
Hutchins v. State Bank, 12 Mete. 421.....	23
Kingsbury v. Chapin, 196 Mass. 533, 82 N. E. 700.....	29, 309, 323, 401
Kinney v. Stevens, 207 Mass. 368, 93 N. E. 586.....	314
Kline v. Baker, 99 Mass. 254.....	77, 457
Little v. Newburyport, 210 Mass. 414, 96 N. E. 1032.....	242
Loring v. Gardner, 221 Mass. 571, 109 N. E. 635.....	254
McCurdy v. McCurdy, 197 Mass. 248, 83 N. E. 881.....	85, 247, 308, 309, 315
Martin v. Gage, 147 Mass. 204, 17 N. E. 310.....	23
Minot v. Treasurer, 207 Mass. 588, 93 N. E. 973.....	177, 691
Minot v. Winthrop, 162 Mass. 113, 38 N. E. 512.....	12, 47, 134, 233
Minton v. Burrill, 229 Mass. 140, 118 N. E. 274.....	283, 528
Nashua Savings Bank v. Abbott, 181 Mass. 531, 63 N. E. 1058.....	331
New England Trust Co. v. Abbott, 205 Mass. 279, 91 N. E. 379...	128, 135
Palmer v. Treasurer, 222 Mass. 263, 110 N. E. 283.....	190

Parkhurst v. Burrill, 228 Mass. 196, 117 N. E. 39.....	56, 237
Peabody v. Treasurer, 215 Mass. 129, 102 N. E. 435.....	311
Pierce v. Stevens, 205 Mass. 219, 91 N. E. 319.....	244
Rice v. Bradford, 180 Mass. 545, 63 N. E. 7.....	244
Shoe & Leather Nat'l Bk. v. Wood, 142 Mass. 563.....	77
Smith v. Sherman, 4 Cush. 408.....	23
State St. Trust Co. v. Treasurer, 209 Mass. 373, 95 N. E. 851....	116, 156
Stevens v. Bradford, 185 Mass. 439, 70 N. E. 425.....	40, 54
Tyler v. Treasurer, 115 N. E. 300.....	66, 166
Ufford v. Spaulding, 156 Mass. 65.....	77
Walker v. Treasurer, 221 Mass. 600, 109 N. E. 647.....	183
Welch v. Treasurer, 217 Mass. 348, 104 N. E. 726.....	133

## MICHIGAN

Chambee v. Durfee, 100 Mich. 112, 58 N. W. 661.....	17, 60, 68
Fox, 154 Mich. 5, 171 N. W. 558.....	17, 44
Merriam, 147 Mich. 630, 111 N. W. 196.....	315
Miller v. McLaughlin, 141 Mich. 425, 104 N. W. 777.....	36, 40, 65
Port Huron v. Wright, 150 Mich. 279, 114 N. W. 76.....	355
Rogers, 149 Mich. 305, 112 N. W. 931.....	315, 328
Stanton, 142 Mich. 491, 105 N. W. 1122.....	26, 310
Stelwagen v. Durfee, 130 Mich. 166, 89 N. W. 728.....	712
Union Trust Co. v. Durfee, 125 Mich. 487, 84 N. W. 1101....	12, 54, 60
	65, 68, 74, 284, 472
Weller v. Wheelock, 155 Mich. 698, 118 N. W. 609.....	245

## MINNESOTA

Drew v. Tift, 79 Minn. 175, 81 N. W. 839.....	16, 48, 60
Basting v. Probate Court, 101 Minn. 485, 112 N. W. 878.....	267, 283
Basting v. Probate Court, 132 Minn. 104, 155 N. W. 1077.....	266, 267
	283, 330
Graff v. Probate Court, 128 Minn. 371, 150 N. W. 1094.....	81, 315
Nicolette Bank v. City Bank, 38 Minn. 85, 35 N. W. 577.....	66
Schulz v. Cit. M. L. Ins. Co., 59 Minn. 308, 61 N. W. 331.....	172
Smith v. Hennepin Cty., 139 Minn. 210, 166 N. W. 125.....	384
State v. Bazille, 97 Minn. 11, 106 N. W. 93.....	13, 53, 60
State v. Gorman, 40 Minn. 232, 41 N. W. 948.....	60
State v. Harvey, 90 Minn. 150, 95 N. W. 764.....	60
State v. Hennepin Cty., 137 Minn. 238, 163 N. W. 285.....	188
State v. Probate Court, 112 Minn. 279, 128 N. W. 18.....	380, 388
State v. Probate Court, 124 Minn. 508, 145 N. W. 390.....	184
State v. Probate Court, St. Louis County, 136 Minn. 342, 162 N. W.	
459. ....	270
State v. Probate Court, 138 Minn. 307, 164 N. W. 365.....	379

State v. Hennepin Cty., 166 N. W. 165.....	559
Tozer v. Probate Court, 102 Minn. 268, 113 N. W. 888.....	35, 38, 73

## MISSOURI

Cupples' Estate, 272 Mo. 465, 199 S. W. 556.....	13, 227
Luminous Medicine Co. v. Leighenhein, 145 Mo. 368, 47 S. W. 10.....	68
Pratt v. Miller, 109 Mo. 78, 18 S. W. 965.....	66
State v. Henderson, 160 Mo. 190, 60 S. W. 109.....	68, 528
State v. Merchants' Exchange M. B. S., 72 Mo. 146.....	158
State v. Switzler, 143 Mo. 287, 45 S. W. 245.....	44, 60, 68
State ex rel. McClintock v. Guinotte, 204 S. W. 806.....	7, 13
Wilhelmi v. Wade, 65 Mo. 39.....	245, 527

## MONTANA

Blackburn, 51 Mont. 234, 152 Pac. 31.....	188
Gelsthorpe v. Furnell, 20 Mont. 299, 51 Pac. 267.....	13, 39
Hinds v. Wilcox, 22 Mont. 4, 55 Pac. 355.....	306
State v. District Court, 41 Mont. 357, 109 Pac. 438.....	64, 65, 72, 446
Stadler v. First National Bank, 22 Mont. 190, 56 Pac. 111.....	66
Tuohy, 35 Mont. 431, 90 Pac. 170.....	22, 37

## NEBRASKA

Dodge County v. Burns, 131 N. W. 932.....	310
Douglass County v. Kountze, 84 Neb. 506, 121 N. W. 593.....	111, 128, 319
Hopeman's Estate, 167 Neb. 792.....	501
Sandford, 90 Neb. 410, 133 N. W. 870.....	94
Sandford, 91 Neb. 752, 137 N. W. 864.....	185
State v. Lancaster, 4 Neb. 537.....	17
State v. Vinsonhaler, 94 Neb. 675, 144 N. W. 248.....	13
Strahan, 93 Neb. 828, 142 N. W. 678.....	188

## NEVADA

Williams, 40 Nev. 241, 161 Pac. 741.....	208
--	-----

## NEW HAMPSHIRE

Carter v. Craig, 77 N. H. 200, 90 A. 598.....	90, 99
Carter v. Eaton, 75 N. H. 560, 78 A. 643.....	241
Carter v. Whitcomb, 74 N. H. 482, 69 A. 779.....	242, 243
Curry v. Spencer, 61 N. H. 624.....	11, 40, 60, 68
Christie's Estate, 101 A. 64.....	388
Gardner v. Carter, 74 N. H. 507, 69 A. 939.....	323

Kingsbury v. Bazeley, 75 N. H. 13, 70 A. 916.....	254
Mann v. Carter, 74 N. H. 345, 68 A. 130.....	13, 27, 65, 328
Thompson v. Kidder, 74 N. H. 89, 65 A. 392.....	16, 41

## NEW JERSEY

Alfred University v. Hancock, 69 N. J. Eq. 470, 46 A. 178.....	233, 242
Astor v. State, 25 N. J. Eq. 303, 72 A. 78.....	505
Campbell v. Supreme Conclave I. O. H., 66 N. J. L. 274, 49 A. 550...	158
Carr v. Edwards, 84 N. J. L. 667, 87 A. 132.....	25
Carter v. Bugbee, 103 A. 818.....	127
Dixon v. Russell, 78 N. J. L. 296, 73 A. 51.....	319
Eastwood v. Russell, 81 N. J. L. 672, 81 A. 108.....	73
Gopsill, 77 N. J. Eq. 215, 77 A. 793.....	55
Grossman v. Hancock, 58 N. J. L. 139, 32 A. 689.....	61
Hartmann, 70 N. J. Eq. 664, 62 A. 560.....	13, 27, 37
Herbert v. Mechanics B. & L. Assn., 14 N. J. Eq. 497.....	325
Hill v. Bugbee, 103 A. 861.....	75
Hoyt v. Hancock, 65 N. J. Eq. 688, 55 A. 1004.....	174
Kip v. Kip, 33 N. J. Eq. 213.....	195
Luydom v. Voorhees, 58 N. J. Eq. 157, 43 A. 4.....	251
McCrea v. Yule, 68 N. J. L. 465, 53 A. 210.....	325
Maxwell v. Edwards, 89 N. J. L. 446, 99 A. 138.....	21
Mechanic's B. & L. v. Conover, 14 N. J. Eq. 219; rev. 17 N. J. Eq. 497.....	325
Meisel v. Merchants Nat'l Bk., 85 N. J. L. 253, 88 A. 1067.....	325
Neilson v. Russell, 76 N. J. L. 655, 71 A. 286.....	19, 65
Rothschild, 71 N. J. Eq. 210, 63 A. 615; aff. 72 N. J. Eq. 425, 65 A. 1118.....	99
Roebling's Estate, 104 A. 295.....	384, 558
Sawter v. Schoenthal, 83 N. J. L. 499, 83 A. 1004.....	73
Security Trust Co. as Exr. of Morse v. Edwards, 90 N. J. L. 558, 101 A. 384.....	324
Security Trust Co. v. Edwards, 90 N. J. L. 579, 101 A. 383.....	275
Senff v. Edwards, 85 N. J. L. 67, 88 A. 1026.....	276
State v. N. Y. Meeting of Friends, 61 N. J. Eq. 620, 48 A. 227.....	55
State v. Parker, 34 N. J. L. 479.....	159
Stengel v. Edwards, 98 A. 424.....	270
Tilford v. Dickinson, 79 N. J. L. 302, 75 A. 574.....	57
Title Guarantee & Trust Co. v. Lohrke, 102 A. 660.....	256
Van Ripper v. Heffenheimer, 17 N. J. L. 49.....	61

## NEW YORK

For New York, see page xxv



## NORTH CAROLINA

Atty.-Gen. v. Allen, 59 N. C. 144.....	381
Atty.-Gen. v. Pierce, 59 N. C. 240.....	306
Barringer v. Cowan, 55 N. C. 486.....	233
Baughm, 90 S. E. 203.....	370
Corporation Com'r's v. Dunn, 174 N. C. 679, 94 S. E. 481.....	188
Gout v. Zimmerman, 5 N. C. 440.....	219
Hunter v. Husted, 45 N. C. 141.....	525
Kramer v. Old, 119 N. C. 1, 25 S. E. 813.....	359
Morris, 138 N. C. 259, 50 S. E. 682.....	19, 85, 416
Pullen v. Commissioners, 66 N. C. 361.....	16, 67
State v. Brevard, 62 N. C. 141.....	528
State v. Brim, 57 N. C. 300.....	223, 528
State v. Scales, 90 S. E. 439.....	54

## NORTH DAKOTA

Moody v. Hagen, 36 N. Dak. 471, 162 N. W. 604.....	80
Strauss v. Costello, 29 N. Dak. 215, 150 N. W. 874.....	523

## OHIO

Chamberlain v. Stecher, 78 Ohio St. 271, 85 N. E. 526.....	525
Eury v. State, 72 Ohio St. 448, 74 N. E. 650.....	40, 51
Friend v. Levy, 76 Ohio St. 26, 80 N. E. 1036.....	54, 60, 71
Haggerty v. State, 55 Ohio St. 613, 45 N. E. 1046.....	136
Hostetter v. State, 26 Ohio Circuit 702.....	57, 58, 65, 445
Humphreys v. State, 70 Ohio St. 67, 70 N. E. 957.....	16, 233
Re Inheritance Tax, 7 Ohio N. P. 547.....	231
Speers, 4 Ohio N. P. 238.....	328
State v. Ferris, 53 Ohio St. 314, 41 N. E. 579.....	14, 20, 60

## OKLAHOMA

Pitman v. State, 158 Pac. 1137.....	520
-------------------------------------	-----

## PENNSYLVANIA

Allen, 9 Pa. Co. Ct. 328.....	L..... 525
Appeal of Commonwealth, 127 Pa. St. 435, 17 A. 1094.....	255
Avery, 34 Pa. St. 304.....	185
Banks, 5 Pa. Co. Ct. 614.....	519
Belcher, 211 Pa. St. 615, 61 A. 252.....	65
Bittinger, 129 Pa. St. 338, 18 A. 132.....	224
Brown, 208 Pa. St. 161, 57 A. 360.....	256
Chamberlain, 257 Pa. St. 113, 101 A. 314.....	309

Clapper v. Frederick, 199 Pa. St. 609, 49 A. 218.....	107
Clare, 103 A. 822.....	379
Coleman, 159 Pa. St. 231, 70 A. 579.....	247
Commonwealth v. Henderson, 172 Pa. St. 135, 33 A. 368.....	227
Commonwealth v. Kuhn, 2 Pa. Co. Ct. 248.....	109
Commonwealth v. Nanerede, 32 Pa. St. 289.....	226
Commonwealth v. Randall, 225 Pa. St. 197, 73 A. 1104.....	44, 226
Commonwealth v. Smith, 20 Pa. St. 100.....	306
Conwell, 5 Pa. Co. Ct. 368.....	157
Cope, 191 Pa. St. 1, 43 A. 79.....	14, 17, 60
Dalrymple, 215 Pa. St. 367, 64 A. 54.....	308
De Bourbon, 211 Pa. St. 623, 61 A. 244.....	255
Duffield, 12 Pa. St. 277.....	184
Finnen, 196 Pa. St. 72, 46 A. 269.....	37, 252
Frank, 9 Pa. Co. Ct. 662.....	249
Freedley, 21 Pa. St. 33.....	448
Galbraith v. Commonwealth, 14 Pa. St. 258.....	57
Grim v. School District, 57 Pa. St. 433.....	21
Hale, 161 Pa. St. 161, 28 A. 1071.....	247
Handley, 181 Pa. St. 339, 37 A. 587.....	308, 309, 501
Hawley, 214 Pa. St. 525, 63 A. 1021.....	97
Hildebrand, 104 A. 711.....	188
Howell, 147 Pa. St. 164, 23 A. 403.....	712
Jackson v. Myers, 101 A. 341.....	374
Kerr, 159 Pa. St. 512, 28 A. 354.....	97
Knight, 104 A. 765.....	384, 560
Lauman, 131 Pa. St. 346, 18 A. 900.....	250
Lea, 194 Pa. St. 524, 45 A. 337.....	248
Lewis, 203 Pa. St. 211, 52 A. 205.....	26
Line, 155 Pa. St. 378, 26 A. 728.....	38, 57, 128, 135, 382
McCormick, 15 Pa. Co. Ct. 621.....	139
McDowell v. Addams, 51 Pa. St. 438.....	55
McKeen v. Northampton County, 49 Pa. St. 519.....	26
Marr, 240 Pa. St. 38, 87 A. 621.....	307
Mavis, 14 Pa. Co. Ct. 171.....	453
Money penny, 181 Pa. St. 389, 27 A. 539.....	448
Mellon, 114 Pa. St. 564, 8 A. 183.....	246
Miller v. Commonwealth, 111 Pa. St. 321, 2 A. 492.....	308
Milliken, 206 Pa. St. 149, 55 A. 853.....	252, 332
Nieman, 131 Pa. St. 346, 18 A. 90.....	259
N. W. M. A. Assn. v. Jones, 154 Pa. St. 99, 26 A. 253.....	172
Oreutt, 97 Pa. St. 179.....	314
Packer, 246 Pa. St. 133, 92 A. 75.....	55
Pepper, 159 Pa. St. 508, 28 A. 353.....	97
Provident Trust Co. v. Durham, 212 Pa. St. 68, 61 A. 636.....	160

Reisch v. Commonwealth, 106 Pa. St. 521.....	128, 130
Russ v. Commonwealth, 210 Pa. St. 544, 60 A. 169.....	74
Schoenberger, 221 Pa. St. 112, 70 A. 579.....	247
Seibert, 110 Pa. St. 324, 1 A. 346.....	128
Short, 16 Pa. St. 63.....	40
Small, 151 Pa. St. 1, 25 A. 23.....	333
Small, 11 Pa. Co. Ct. 1.....	249
Smith, 104 A. 492.....	481
Stringer v. Commonwealth, 26 Pa. St. 429.....	423
Strode, 52 Pa. St. 181.....	17
Stuckey v. Keek's Exrs., 26 Pa. St. 397.....	195
Taber, 257 Pa. St. 205, 101 A. 311.....	97
Thomson, 12 Phila. 36.....	527
Van Biel, 101 A. 834.....	384
Vanuxem, 212 Pa. St. 315, 61 A. 876.....	308
Vogle, 1 Pa. Co. Ct. 352.....	168
Waugh, 78 Pa. St. 436.....	148
Williamson, 153 Pa. St. 508, 26 A. 246.....	36, 308
Wright, 38 Pa. St. 507.....	111

## SOUTH DAKOTA

McKenna, 25 S. Dak. 369, 126 N. W. 611.....	15, 22, 46, 67
---	----------------

## TENNESSEE

Bailey v. Henay, 143 S. W. 1124.....	74
Bailey v. Drane, 96 Tenn. 16, 33 S. W. 573.....	72
Crenshaw v. Moore, 124 Tenn. 528, 137 S. W. 924.....	188
English v. Crenshaw, 120 Tenn. 531, 110 S. W. 210.....	94
Harrison v. Johnston, 109 Tenn. 245, 70 S. W. 414.....	255
Knox v. Emerson, 123 Tenn. 409, 131 S. W. 972.....	18, 54, 84
Memphis Trust Co. v. Speed, 114 Tenn. 677, 88 S. W. 321..	394, 396, 399
Shelton v. Campbell, 109 Tenn. 690, 72 S. W. 112.....	519
State v. Alston, 94 Tenn. 674, 30 S. W. 750.....	15, 41, 44
Zickler v. Union Bank and Trust Co., 104 Tenn. 277, 57 S. W. 341....	72

## TEXAS

State ex rel. Walton v. Yturria, 204 S. W. 315.....	227
---	-----

## UTAH

Bullen, 151 Pac. 533.....	15, 185
Dixon v. Rickerts, 26 Utah 215, 72 Pac. 947.....	41, 712
Hone's Estate, 166 Pac. 990.....	20
State v. Simms, 173 Pac. 964.....	186

VERMONT

Curtis, 88 Vt. 445, 92 A. 965.....	56
Hickok, 78 Vt. 259, 62 A. 724.....	54, 233
Howard, 80 Vt. 489, 68 A. 513.....	54, 69, 71
Joslyn, 76 Vt. 88, 56 A. 281.....	15, 17
Meadon, 81 Vt. 490, 70 A. 579.....	81

VIRGINIA

Commonwealth v. Wellford, 114 Va. 372, 76 S. E. 917.....	35
Eyre v. Jacob, 14 Gratt. 422.....	16, 44
Fox v. Commonwealth, 16 Gratt. 1.....	72
Miller v. Commonwealth, 27 Gratt. 110.....	233
Posey et al. v. Commonwealth, 96 S. E. 771.....	7
Schoolfield v. Lynchburg, 78 Va. 366.....	16, 21
Wytheville v. Johnson, 108 Va. 589, 62 S. E. 328.....	21

WASHINGTON

Clark, 37 Wash. 671, 80 Pac. 267.....	76
Lotzgesell, 62 Wash. 352, 113 Pac. 1105.....	527
State v. Clark, 30 Wash. 439, 71 Pac. 20.....	17, 44
Stixrud, 58 Wash. 339, 109 Pac. 343.....	79, 80
White v. Tax Commissioners, 42 Wash. 360, 84 Pac. 831.....	16, 61, 84

WISCONSIN

Beals v. State, 139 Wis. 544, 121 N. W. 347.....	16, 41
Black v. State, 113 Wis. 205, 89 N. W. 522.....	47, 60, 65
Carter, 166 N. W. 657.....	224
Dessert, 142 N. W. 647.....	120
Larsen v. Johnson, 78 Wis. 300, 47 N. W. 615.....	260
Montague v. State, 163 Wis. 58, 157 N. W. 508.....	178
Nunnemacher v. State, 129 Wis. 190, 108 N. W. 627.....	42, 472
Smith v. State, 161 Wis. 588, 155 N. W. 509.....	188
State v. Bullen, 143 Wis. 512, 128 N. W. 109; aff. 240 U. S. 625.....	111, 128 135, 157, 416
State v. Carpenter, 129 Wis. 180, 108 N. W. 641.....	454
State v. Pabst, 139 Wis. 561, 121 N. W. 351.....	115, 118, 347, 519
State v. Thompson, 154 Wis. 320, 142 N. W. 647.....	116, 120
State v. Mann, 76 Wis. 469, 45 N. W. 526.....	60, 67, 68
State v. Widule, 161 Wis. 389, 154 N. W. 695.....	264

WYOMING

Wyoming Coal Co. v. State, 15 Wyo. 97, 87 Pac. 377.....	66
---	----

## UNITED STATES

Ayer & Lord Co. v. Kentucky, 202 U. S. 409, 26 S. Ct. Rep. 679.....	312
Baltic Mining Co. v. Commonwealth, 231 U. S. 68.....	64
Baltzer v. North Carolina, 161 U. S. 240.....	517
Beers v. Arkansas, 20 How. 527.....	517
Beers v. Glynn, 211 U. S. 477.....	48, 404
Bell Gap R. R. Co. v. Penn, 134 U. S. 232.....	64
Blackstone v. Miller, 188 U. S. 189, 23 S. Ct. Rep. 277.....	4, 6, 26, 28 213, 330
Blair v. Herold, 150 Fed. 199; aff. 158 Fed. 804.....	137
Board of Education v. Illinois, 203 U. S. 553, 27 S. Ct. Rep. 171...	42, 55
Brown v. Kinney, 137 Fed. 1018.....	553
Brune v. Smith, Fed. Cas. 2053.....	255
Bullen v. Wisconsin, 240 U. S. 625, 36 S. Ct. Rep. 473.....	22, 128
Carpenter v. Pennsylvania, 17 How. 456.....	17, 40
Cahen v. Brewster, 203 U. S. 543, 27 S. Ct. Rep. 174.....	39, 51, 52, 57
Campbell v. California, 200 U. S. 87, 26 S. Ct. Rep. 182.....	72
Chanler v. Kelsey, 205 U. S. 466, 27 S. Ct. Rep. 550.....	175, 177
Clapp v. Mason, 94 U. S. 589.....	71
Cornell Steamboat Co. v. Schmer, 235 U. S. 549.....	64
Dale v. Pattison, 234 U. S. 399, 34 S. Ct. Rep. 785.....	326
Delaware R. R. Tax Cases, 18 Wall. 206.....	63
Duus v. Brown, 245 U. S. 176, 38 S. Ct. Rep. 111.....	79, 81
Eidman v. Martinez, 184 U. S. 578, 22 S. Ct. Rep. 515.....	53
Flint v. Stone Tracy Co., 220 U. S. 107.....	61, 64
Frederickson v. State, 23 How. 445.....	81
Foreign Held Bonds, 15 Wall. 300.....	313
Hamilton Co. v. Mass, 6 Wall. 632.....	63
Hamilton v. Rathbone, 175 U. S. 414.....	306
Hanley v. Kansas City Ry. Co., 187 U. S. 617.....	64
Hatch v. Reardon, 204 U. S. 152.....	52
Hawley v. Malden, 232 U. S. 1, 34 S. Ct. Rep. 201.....	319, 553
Heberton v. McClain, 135 Fed. 226.....	553
Herold v. Shanley, 146 Fed. 20, 76 C. C. A. 478.....	269, 553
Home Ins. Co. v. New York, 134 U. S. 599.....	62
Horn Silver Mining Co. v. New York, 143 U. S. 305.....	64
Kahen v. Herold, 147 Fed. 575; aff. 86 C. C. A. 598, 159 Fed. 608 163 Fed. 947.....	514
Keeney v. New York, 222 U. S. 525, 32 S. Ct. Rep. 105.....	38, 63, 128
Kerr v. Goldsborough, 150 Fed. 289, 80 C. C. A. 177.....	226, 227
Kerz v. Woodman, 218 U. S. 205, 30 S. Ct. Rep. 631.....	71
King v. Eidman, 128 Fed. 815.....	231
Kintzing v. Hutchinson, Fed. Cas. 7834.....	331
Knowlton v. Moore, 178 U. S. 41, 20 S. Ct. Rep. 747.....	6, 19, 20, 28 55, 67, 557, 566, 569

Kirtland v. Hotchkiss, 100 U. S. 491.....	64
Mager v. Grima, 17 How. 490.....	61
Maine v. Grand Trunk Ry. Co., 142 U. S. 217.....	64
Magoun v. Illinois Trust Co., 170 U. S. 283, 18 S. Ct. Rep. 594..	16, 42, 62
Mason v. Sargent, 104 U. S. 689.....	71
Michigan Central Ry. Co. v. Powers, 201 U. S. 245.....	64
Moffitt v. Kelly, 218 U. S. 400.....	178, 207
Morse v. Puckgaber, 184 U. S. 593, 22 S. Ct. Rep. 521.....	217
Murdock v. Ward, 178 U. S. 139, 20 S. Ct. Rep. 775.....	21
National S. D. Co. v. Stead, 232 U. S. 58, 34 S. Ct. Rep. 209.....	413
Norton v. Selby County, 118 U. S. 425, 6 S. Ct. Rep. 1121.....	511
Orr v. Gilman, 183 U. S. 278, 22 S. Ct. Rep. 213.....	63
Ould v. Washington Hospital, 95 U. S. 303.....	236
Page v. Edmunds, 187 U. S. 596, 23 S. Ct. Rep. 200.....	331
Page v. Rives Fed. Cas. No. 10,666, 1 Hughes 287.....	97
Peterson v. Iowa, 245 U. S. 170, 38 S. Ct. Rep. 109.....	79, 80
Plummer v. Coler, 178 U. S. 115, 20 S. Ct. Rep. 829.....	16, 21, 62
Prevost v. Greneaux, 19 How. 1.....	80
Railroad Co. v. Alabama, 101 U. S. 832.....	518
Railroad Co. v. Tennessee, 101 U. S. 337.....	518
Ransom v. United States, 70 Fed. Cas. 11574.....	90
Ritter v. Mutual L. Ins. Co., 169 U. S. 139, 18 S. Ct. Rep. 300.....	158
Scholey v. Rew, 90 U. S. 331, 23 Wall. 331.....	44, 246
Scudder v. Comptroller, 175 U. S. 32, 20 S. Ct. Rep. 26.....	508
Sherman v. United States, 178 U. S. 150, 20 S. Ct. Rep. 779.....	514
Smith v. Reeves, 178 U. S. 436.....	517
Snyder v. Brettman, 190 U. S. 249, 23 S. Ct. Rep. 803.....	17, 212
Society for Savings v. Coite, 6 Wall. 594.....	63
Stickney v. Kelsey, 209 U. S. 419, 28 S. Ct. Rep. 508.....	508
Sturges v. United States, 117 U. S. 363, 6 S. Ct. Rep. 767.....	71
Tilt v. Kelsey, 207 U. S. 43, 28 S. Ct. Rep. 1.....	75, 76, 466, 469
Union Mutual v. Stevens, 19 Fed. 671.....	158
U. S. v. Banks, 17 Fed. 322.....	151
U. S. v. Hazard, 8 Fed. 380.....	71
U. S. v. Kelly, 27 Fed. 542.....	527
U. S. v. Kelly, 28 Fed. 845.....	71
U. S. v. Morris, 27 Fed. 341.....	53
U. S. v. N. Y. Ins. & Trust Co., Fed. Cas. 15873.....	71
U. S. v. Perkins, 163 U. S. 625, 16 S. Ct. Rep. 1073.....	16
U. S. v. Rankin, 8 Fed. 872.....	71
U. S. v. Trucks, 27 Fed. 541.....	527
U. S. v. Tappan, Fed. Cas. 16431.....	527
Vanderbilt v. Eidman, 196 U. S. 480, 25 S. Ct. Rep. 331.....	553
Wallace v. Myers, 38 Fed. 184.....	21
Wheeler v. Sohmer, 233 U. S. 434.....	314, 316

Wisconsin and M. Ry. Co. v. Powers, 191 U. S. 379.....	64
Yazoo and Miss. Ry. Co. v. Adams, 180 U. S. 1, 21 S. Ct. Rep. 240...	56

## ENGLAND

Austin v. Boys, 27 L. J. Ch. 714.....	359
Blackstone's Commentaries .....	4
Dalhousie v. M'Doual, 7 C. & F. 817.....	219
Dalrymple v. Dalrymple, 2 Hogg Con. 63.....	218
Dufour v. Ferraro, Hargrave's Jurid. Arg. 304.....	88
Edwards v. Freeman, 2 P. Wms. 422.....	4
Hyde v. Hyde, 1 P. & D. 130.....	218
Lyte et Ux. v. Peny, Easter Term, 23 Hen. VIII.....	107
Mellersch v. Keen, 28 Beav. 453.....	361, 367
Page v. Ratliffe, 75 L. T. Rep. 371.....	360, 361, 367
Thompson v. Advocate General, 12 Cl. & F. 1.....	17, 19, 212
Warrander v. Warrander, 2 C. & F. 488.....	219
Wallace v. Atty.-Gen., L. R. 1 Che. 1.....	53
Yelverton v. Yelverton, 1 Sw. & Tr. 574.....	217





# INHERITANCE TAXATION

## PART I—THE TAX

	PAGE
<b>FUNDAMENTAL PRINCIPLES.</b> .....	1
1. Origin. ....	1
2. Theory. . . . .	4
3. Extension of Legislative Power.....	6
4. A Distinct Department of Jurisprudence.....	6
5. Trend of Recent Authorities.....	6
<b>A. Not a Tax on Property but on the Right to Receive and Inherit It.</b> .....	8
1. Review of the Authorities.....	9
2. The Privilege Taxed. ....	17
3. Practical Applications of the Rule.....	20
a. Not a Direct Tax to be Apportioned among the States....	20
b. Rules as to Uniformity and Equality Modified.....	21
c. Power to Levy not Included in Municipal Charters.....	21
d. Property Otherwise Exempt must be Included.....	21
e. Construction of Contracts.....	22
f. Personalty of Resident Taxed, though in Foreign Jurisdiction. . . . .	22
g. Intangibles of Non-resident within the Jurisdiction Taxable. . . . .	25
h. Double Taxation. ....	25
<b>B. The Transfer Takes Place at Death</b> .....	28
1. Vested Right of the State.....	29
2. Renunciation by Legatee. ....	32
3. Law in Force at Date of Proceedings Controls Procedure Only.	34
4. Rate Fixed at Death Cannot be Increased.....	34
5. Rights Vested Prior to Death Cannot be Taxed.....	35
6. Gains or Losses During Administration.....	36
7. Exceptions to the Rule.....	38
a. By Nature of the Transfer.....	38
b. By Statute. ....	39
<b>C. Classifications.</b> . . . . .	41
1. By Domicile. ....	43
2. By Relationship. ....	44
3. By Amount of Property Transferred.....	45
a. Where the Tax is on the Right to Receive.....	45
b. Where the Tax is on the Right to Transfer.....	46

	PAGE
4. By the Kind of Property Transferred.....	48
a. Real and Personal. ....	48
b. Tangibles and Intangibles.....	49
c. Other Property Distinctions. ....	49
5. By Payment of Other Taxes.....	52
6. By the Kind of Transfer.....	52
D. General Rules of Construction.....	53
1. Strict or Liberal. ....	53
2. Exemptions. . . . .	55
3. Retroactive or Prospective. ....	56
4. Statutes Held Invalid. ....	60
5. Statutes Sustained under the Fourteenth Amendment.....	61
6. Notice and a Hearing.....	64
7. Copied or Adopted Statutes.....	65
8. Practical Construction.....	66
9. Arbitrary or Confiscatory Rates.....	67
10. Public Purpose. ....	67
11. Amendment. ....	68
12. Repeal. ....	69
a. Saving Clauses. ....	70
b. By Implication. ....	71
c. Incidental Effects. ....	72
13. Unconstitutional Statutes. ....	73
14. Other General Rules. ....	73
E. Conflict of Laws. ....	74
1. Jurisdiction. . . . .	74
2. Devolution Controlled by Foreign Laws.....	75
3. Full Faith and Credit.....	75
4. Proof of Foreign Laws.....	76
5. As to Sister States.....	77
6. As against Aliens Protected by Treaties.....	78
7. Reciprocal Provisions. ....	81

## PART I—THE TAX

---

### FUNDAMENTAL PRINCIPLES.

#### 1. Origin.

Inheritance Taxation has been one of the sources of revenue for the support of government from the most ancient times. It is said that it was employed by the Ptolomies in Egypt, and Gibbon describes its introduction into the Roman polity by Augustus. It was levied for the support of the Roman army under the name of "*vicessima hereditatum et legatorum*." It was introduced in England in 1780. Under different names the tax is now a source of revenue in almost every civilized country. It exists in Great Britain, France, Germany, Switzerland, the Netherlands, Belgium, Sweden, Norway, Denmark, Austria-Hungary, Italy, and nearly all of the other European countries, and is most highly developed in the Australian states. In the Australasian colonies succession duties are among the chief source of revenue; and in some cases heavy progressive taxes have been imposed, not from fiscal considerations alone, but also for the purpose of breaking up large estates. The rates are progressive in all of the colonies, rising to 10% in Victoria, New South Wales, South Australia and Western Australia, to 13% in New Zealand, and to 20% in Queensland. It is stated upon the best authority that the institution of private property has not weakened, nor capital driven from the colonies, by these progressive taxes. They have given very general satisfaction and in almost every instance the rates have been increased after the tax has been in operation for a time. The graduation accord-

ing to relationship is much less elaborate than in European countries; usually not more than two or three classes of relatives are distinguished.

## 2. Theory.

Fundamentally the tax rests upon the proposition that a man cannot take with him into the world beyond, the possessions he has acquired here. When he dies those possessions become the property of the State or of such persons as the laws of the State may direct.

Descent is a creature of statute, and not a natural right. (2 Blackstone's Com., pp. 10, 11, 12, 13.) At common law, prior to the Statute of Distribution in England (22 and 23 Car. 11), descent of personal property could hardly be recognized, and even after the statute requiring administration to be granted, the administrator, after the payment of the debts and funeral expenses of the deceased, was entitled to retain to himself the residue of his effects, the court holding that there was no power to compel a distribution.

2 Bl. Com. 515.

*Edwards v. Freeman*, 2 P. Wms. 442.

*State v. Hamlin*, 86 Me. 495; 30 A. 76.

As Mr. Blackstone states the theory: "All property must therefore cease upon death, considering men as absolute individuals, and unconnected with civil society: for, then, by the principles before established, the next immediate occupant would acquire a right in all that the deceased possessed. But as, under civilized governments, which are calculated for the peace of mankind, such a constitution would be productive of endless disturbances, the universal law of almost every nation (which is a kind of secondary law of nature) has either given the dying person a power of continuing his property, by disposing of his possessions by will; or, in case he neglects to dispose of it, or is not permitted to make any disposition at all, the municipal law of

the country then steps in, and declares who shall be the successor, representative, or heir of the deceased; that is, who alone shall have a right to enter upon this vacant possession, in order to avoid that confusion which its becoming again common would occasion. And further, in case no testament be permitted by the law, or none be made, and no heir can be found so qualified as the law requires, still, to prevent the robust title of occupancy from again taking place, the doctrine of escheats is adopted in almost every country; whereby the sovereign of the State, and those who claim under his authority, are the ultimate heirs, and succeed to those inheritances to which no other title can be formed.”

In civil law countries the “natural right” of children to receive an inheritance from their parents is recognized. By the Code Napoleon, gifts of property, whether by acts *inter vivos* or by will, must not exceed one-half the estate if the testator leave but one child; one-third if he leaves two children; one-fourth if he leaves three or more. If he have no children, but leaves ancestors, both in the paternal and maternal line, he may give away but one-half of his property, and but three-fourths if he have ancestors in but one line. By the law of Italy, one-half a testator’s property must be distributed equally among all his children; the other half he may leave to his eldest son or to whomsoever he pleases. Similar restrictions upon the power of disposition by will are found in the codes of other continental countries, as well as in the State of Louisiana. Though the general consent of the most enlightened nations has, from the earliest historical period, recognized a natural right in children to inherit the property of their parents, there is no legal principle to prevent the Legislature from taking away or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to public good.

### 3. Extension of Legislative Power.

But the power to tax inheritances does not rest upon this theory alone. The United States Government imposes them, and yet Congress has no power to control the devolution of estates, nor to confiscate them upon the death of the owner; neither has one State the power to regulate the succession of citizens of other States as to property of those citizens within its jurisdiction, and yet nearly all the States tax the devolution of such property. The right of the United States Government to impose such taxes rests therefore upon its power to levy excise duties and imposts.

*Knowlton v. Moore*, 178 U. S. 41; 20 S. Ct. Rep. 747.

The tax imposed by the States upon the property of non-resident decedents within their jurisdiction is founded upon that jurisdiction, while the devolution of the property is regulated by the laws of the State of domicile.

*Bluckstone v. Miller*, 188 U. S. 189; 23 S. Ct. Rep. 277.

### 4. A Distinct Department of Jurisprudence.

Inheritance taxation has come to be a distinct department of jurisprudence. Although it is purely statutory, and the statutes vary with the forty-nine jurisdictions of the United States enacting them, they are based upon fundamental doctrines which are peculiar to this subject.

Both the States and the Federal Government now look to this form of taxation for a substantial revenue, and a text-book on the subject "kept up to date" is essential to every law library.

The task first undertaken by this work is to collect the statutes and decisions and codify them into a consistent body of law.

### 5. Trend of Recent Authorities.

The legislation and litigation of the last two years has altered and developed the law on this subject; but the gen-

eral trend in the attitude of the courts has been to sustain the power of the Legislature wherever possible.

“It is well settled that the power of the State to impose such taxes is unlimited,” remarks the Supreme Court of Virginia in sustaining the graded rates under the Virginia act of 1916, and citing “*Gleason & Otis*, 1st Ed., p. 3.”

*Posey et al. v. Commonwealth*, 96 S. E. 771.

The new Missouri statute of 1917 was bitterly attacked, but was sustained by the courts of that State in *State ex rel. McClintock v. Guinotte*, 204 S. W. 806.

The Georgia statute was recently sustained in *Farkas v. Smith*, 147 Ga. 563; 94 S. E. 1016, and the general features of all the statutes have now received judicial construction.

In New York the power of the Legislature to impose an additional inheritance tax upon the estate of a decedent as to investments upon which he had not paid the taxes prescribed by statute during his lifetime was bitterly assailed, and the act was held unconstitutional by the lower courts (*Matter of Watson*, 104 Misc. 219; aff. 186 App. Div. 48; 176 Supp. 19), but the tax was sustained by the Court of Appeals, after much debate and doubt, by a vote of four to three.

*Matter of Watson*, 226 N. Y. 384.

Inheritance taxation involves two cardinal doctrines that should be thoroughly grasped at the outset. There is hardly a litigation in all the thousands of controversies that have arisen over inheritance taxation that does not involve one or both of them.

They are:

(a) That the tax is not a property tax; but an excise or impost upon the right to transmit property at death; or upon the right to succeed to it from the dead.

(b) That the tax accrues because of and at the

death of the owner; that the rights and liabilities of the State and the beneficiaries date from that event; and that the value of the property transmitted or received, which measures the value of the inheritance, is taken at that date.

This general rule is subject to certain exceptions, considered later, such as deeds reserving a life use, without power of revocation, and gifts in contemplation of death.

### **A.—NOT A TAX ON PROPERTY BUT ON THE RIGHT TO RECEIVE AND INHERIT IT.**

If an inheritance tax is construed as a tax upon the property of a decedent, such a tax necessarily violates the universal constitutional requirements that taxation shall be equal in its burdens and uniform in its application.

No just property tax could be levied that was unequal and not uniform.

No just inheritance tax could be imposed that did not make exemptions to the widow and the orphan or that taxed their patrimony equally with the succession of distant relatives and strangers.

An annual tax levy that assessed Farmer Jones, on one side of the street, at 2%, and Farmer Robinson, on the other side of the street, at 5% of the value of their respective farms, would obviously be unjust, tyrannical, oppressive and intolerable.

But if Farmer Jones leaves his farm to his widow and his son, and Farmer Robinson devises his acres to cousins in Norway, a tax on the transfer by Jones at 2% and on that by Robinson at 5% is recognized as just and equitable.

Moreover, it is generally thought that a fortunate youth who inherits a sum sufficient to class him with the "idle rich" should pay more, proportionately, for the privilege than the son of the poor man who merely gets a fair start in



life as the result of his father's industry and solicitude and his mother's life-long sacrifices and economies.

While these considerations are applicable to the taxation of inheritances they are fundamentally obnoxious to the principles of ordinary taxation — hence the vital importance of the initial proposition that such taxes are not levied upon property, but upon the right to transmit and inherit it.

### 1. Review of the Authorities.

The leading cases in all the States deal with the problem and arrive at a nearly unanimous view; but to apply it as we must throughout this treatise a review of these authorities is necessary.

*Arkansas*.—“Being a statute taxing privileges and not property it does not conflict with the uniformity provisions. It but divides the value of estates passing to certain classes of persons into certain amounts, a reasonable classification for the purpose of laying or levying a progressive inheritance tax.”

*State v. Handline*, 100 Ark. 175; 139 S. W. 1112.

*California*.—“The tax thus imposed is in the nature of an excise tax or a tax upon the right of succession. The right of inheritance including the designation of heirs and the proportions which the several heirs shall receive as well as the right of testamentary disposition are entirely matters of statutory enactment and within the control of the Legislature.”

*Wilmerding's Estate*, 117 Cal. 281; 49 Pac. 181.

*Colorado*.—“As the tax is not on property but on the right of succession, the State may tax privileges, discriminate between relatives and grant exemptions; and it is not precluded from this power by the provision of the respective State constitutions regarding uniformity of taxation.”

*Brown v. Elder*, 32 Colo. 527; 77 Pac. 853.

*Walker v. People* (Colo.), 171 Pac. 747.

*Connecticut*.—"Our succession tax is computed with reference to the whole beneficial value of the succession which passes by force of our law."

*Hopkins Appeal*, 77 Conn. 644; 60 A. 657.

"The tax is not on property, but death duties are levied in the course of the settlement of estates as an incident to the devolution of title."

*Corbin v. Baldwin*, 92 Conn. 99; 101 A. 834.

*Georgia*.—"It is an excise on the transfer of property."

*Farkas v. Smith*, 147 Ga. 563; 44 S. E. 1016.

*Illinois*.—"The broad principle presented is that the Legislature may create new classes of property with reference to estates under which they may regulate the right to inherit or devise and take under devise, and such right existing such classes may be created, and as created may be uniform, and the assessment by valuation when declared to operate equally on the right of succession to such classes is not a violation of the constitution."

*Kochersperger v. Drake*, 167 Ill. 122; 47 N. E. 321.

*Indiana*.—"Strictly speaking, an inheritance tax is not a tax on property, but on the right of succession or transfer of property or some beneficial interest therein."

*Conway's Estate* (Ind.), 120 N. E. 717.

*Iowa*.—"It is not a tax upon property as that phrase is ordinarily understood; but a tax upon the succession, upon the privilege of succeeding to the estate of the decedent."

*McGhee v. State*, 105 Ia. 9; 74 N. W. 695.

*Kentucky*.—"As the privilege or right to take property by inheritance or devise is not a natural or inherent right of persons, but is a creation of the law, it is subject to regulation by statute, and the imposition of the tax as incident to the right is authorized under our governmental system when not expressly forbidden by the constitution."

*Booth v. Commonwealth*, 130 Ky. 88; 113 S. W. 61.

*Louisiana.*—“It is not a tax on property but a bonus or premium exacted by the sovereign on the transmission of an estate, the amount being measured by the value of the property.”

*Succession of Kohn*, 115 La. 71; 38 So. 898.

*Maine.*—“The constitution guarantees to the citizen the right of acquiring, possessing and protecting property, but the guarantee ceases to operate at the death of the possessor. There is no provision of our constitution or that of the United States which secures the right to any one to contract or dispose of his property after his death, nor the right to any one, whether kindred of or not, to take it by inheritance. Descent is a creature of statute and not a natural right.”

*State v. Hamlin*, 86 Me. 495; 30 A. 76.

*Maryland.*—“The tax is on the transmission of property.”

*State v. Dalrymple*, 70 Md. 294; 17 A. 82.

*Massachusetts.*—“To make a distinction between collateral kindred or strangers in blood and kindred in the direct line in reference to the assessment of such a tax, either by exempting the kindred in the direct line or by imposing on collaterals and strangers a higher rate of taxation, has the sanction of nearly all States which have levied taxes of this kind. It has a sanction in reason, for the moral claim of collaterals and strangers is less than that of kindred in the direct line, and the privilege is therefore greater. The tax imposed by this statute is uniformly imposed upon all estates and all persons within the description contained in it, and the tax is not plainly and grossly oppressive in amount.

“It is argued that the excise, if upon the privilege of taking property by will or descent, should be the same

whenever the privilege enjoyed is the same in kind and extent, whatever may be the value of the estate, and that the exemptions should relate to the value of the property received by those who have the privilege of receiving it, and not the value of the estate. But the right or privilege taxed can perhaps be regarded either as the right or privilege of the owner of property to transmit it on his death, by will or descent, to certain persons, or as the right or privilege of these persons to receive the property.”

*Minot v. Winthrop*, 162 Mass. 113; 38 N. E. 512.

*Michigan*.—“Respondent’s contention is that it is a tax upon the transfer of property and is based upon the proposition that inheritance is not a natural right but a creature of the statute and the bounty of the public. The conclusion that this statute imposes an *ad valorem* tax upon property can only be avoided by saying that it is not a tax upon the property and that, therefore, the *ad valorem* feature which so far as the assessment upon the value is concerned, is certainly present, is wanting because it is not an assessment upon the value of the property taxed. In short the claim of the respondent is that this is a tax upon a privilege, viz., the privilege of succession, and that there is a legal distinction between a tax upon the property itself assessed upon the basis of its value and a tax upon this privilege assessed upon the basis of its value which is measured by that which is the subject of the privilege, viz., the property. Unless this is a distinction without a substantial difference the respondent is right.”

After citing many authorities the court concludes:

“Many other authorities might be cited in support of the proposition that it is a tax upon the privilege rather than upon the property. We are of the opinion that the overwhelming weight of authority supports it.”

*Union Trust Co. v. Probate Judge*, 125 Mich. 487; 84 N. W. 1101.

*Minnesota.*—“It is variously termed an ‘inheritance tax,’ ‘succession tax,’ ‘legacy tax,’ and ‘probate duties,’ but, whatever it may be termed it is not a tax upon property; but upon the right of succession thereto.”

*State v. Bazille*, 97 Minn. 11, 19; 106 N. W. 93.

*Missouri.*—“It is a bonus or duty levied on the right of inheritance.”

*Cupples Estate*, 272 Mo. 465; 199 S. W. 556.

“Inheritance of property is not a natural or absolute right and is not a right which may not be abolished by the law makers.”

*State ex rel. McClintock v. Guinotte*, 204 S. W. 806.

*Montana.*—“The burden of the tax is not imposed upon the property itself but upon the privilege of acquiring property by inheritance. In nearly all the inheritance tax laws the statute provides for an appraisal of the property to be inherited; but the object of such valuation is not to tax the property itself. It is to arrive at a measure of the price by which the privilege of inheritance can be valued.”

*Gelsthorpe v. Furnell*, 20 Mont. 299; 51 Pac. 267.

*Nebraska.*—“It is a tax upon the right of succession to property, that is upon the right to receive the property from the estate of the decedent and not upon the property itself.”

*State v. Vinsonhaler*, 94 Neb. 675; 144 N. W. 248.

*New Hampshire.*—“Those who acquire title by the operation of our laws relating to the estates of deceased persons must take the benefits charged with the burden imposed by those laws.”

*Mann v. Carter*, 74 N. H. 345, 352; 68 A. 130.

*New Jersey.*—“The tax imposed is on the right of succession under a will or by devolution in case of intestacy.”

*Hartmann's Appeal*, 70 N. J. Eq. 664; 62 A. 560.

*New York.*—"It is a tax not on property but on succession, that is to say a tax on the legatee for the privilege of succeeding to property."

*Matter of Gihon*, 169 N. Y. 443; 62 N. E. 561.

"It is in the nature of an excise tax on the right and method of transfer."

*Matter of White*, 208 N. Y. 64; 101 N. E. 793.

"A tax is a property tax when imposed by reason of the ownership; a transfer tax when imposed on the method of acquisition."

*Matter of Vanderbilt*, 172 N. Y. 69; 64 N. E. 782.

*North Carolina.*—"A succession tax is on the right of succession to property and not on the property itself. The right to take property by devise or descent is not one of the natural rights of man but is a creature of law."

*Morris' Estate*, 138 N. C. 259; 50 S. E. 682.

*Ohio.*—"As a majority of the court are of the opinion that it is not a tax upon property but upon the right to receive property the statute must as to this point be sustained."

*State v. Ferris*, 53 Ohio St. 314, 340; 41 N. E. 579.

*Pennsylvania.*—"Conceding for argument's sake merely that the Legislature has power under our constitution so to change the law of descent and succession as to give the commonwealth a certain portion of every decedent's estate, or otherwise to regulate the transmission or devolution of such estates, it does not by any means follow that the direct inheritance tax law under consideration is such an act."

*Cope's Estate*, 191 Pa. St. 1, 23; 43 A. 79.

*South Dakota.*—"Treating it as the taxation of the privilege or right or even more correctly the taxation of

the transmission of property, it is readily seen that it becomes absolutely immaterial whether we consider the transmission of or succeeding to property an inherent right or a statutory privilege. A corporation acquires its right to do business by the charter received. A natural person has an inherent right to do such business. If the State determines to tax the exercise of such right, it does so as to both the persons and the corporation, utterly disregarding the nature or source of the right.

“This charge imposed upon transmission of property is clearly a tax and has nothing to do with and is not at all dependent for its validity upon the right to regulate the succession of property.”

*McKenna's Estate*, 25 S. D. 369, 377; 126 N. W. 611.

*Tennessee*.—“It is a retention by the State of a part of a deceased person's property which the State may take to meet its necessities, and which in certain cases it may take in toto as in case of escheated property.”

*State v. Alston*, 94 Tenn. 674; 30 S. W. 750.

*Utah*.—“When, as here, the tax is not one which is controlled by our constitution it is for the Legislature to say to what extent and upon what property it shall become operative.”

*Matter of Bullen*, 151 Pac. 533.

*Vermont*.—“All agree that this is a tax upon the right to succeed to estates left vacant by death and is imposed by the sovereignty regulating that right in virtue of its authority to enforce contribution from those who become invested with property by grace of its power.”

*In re Joslyn*, 76 Vt. 88; 56 A. 281.

*Virginia*.—“The objection that the tax is not levied upon the heir or legatee but is to be paid out of the estate of the decedent and, therefore, that it cannot be considered

a tax upon the privilege of succeeding to the property is, I think, more specious than real. Whether the tax is paid by the personal representative before he turns over the estate to the party entitled or by the latter after he receives it, the effect is the same. It is in either case a premium paid for the right enjoyed and the value of the estate is exactly diminished by the amount of the premium.”

*Eyre v. Jacob*, 14 Gratt. 422, 429.

*Washington*.—“The act imposes a tax on the right of succession.”

*White v. Tax Commissioners*, 42 Wash. 360; 84 Pac. 831.

*Wisconsin*.—“It is not a tax upon property or upon property rights in any sense, but purely an excise levied upon the transfer or transaction and merely measured in amount by the amount of the property transferred.”

*Beals v. State*, 139 Wis. 544; 121 N. W. 347.

*United States*.—“Thus the tax is not upon the property in the ordinary sense of the word but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee.”

*United States v. Perkins*, 163 U. S. 625; 16 S. Ct. Rep. 1073.

To the same effect are:

*Matter of Sherwell*, 125 N. Y. 376; 26 N. E. 464.

*Magoun v. Ill. Trust and Sav. Bk.*, 170 U. S. 283; 18 S. Ct. Rep. 594.

*Plummer v. Coler*, 178 U. S. 115; 20 S. Ct. Rep. 829.

*Re Magnes*, 32 Colo. 52; 77 Pac. 853.

*Re Macky*, 45 Colo. 316; 101 Pac. 334.

*Wieting v. Morrow*, 151 Ia. 590; 132 N. W. 193.

*Leavell v. Arnold*, 131 Ky. 426; 115 S. W. 232.

*Schoolfield v. Lynchburg*, 78 Va. 366.

*Pullen v. Commissioners*, 66 N. C. 361.

*Humphreys v. State*, 70 Ohio St. 67; 70 N. E. 957.

*Thompson v. Kidder*, 74 N. H. 89; 65 A. 392.

*Tyson v. State*, 28 Md. 577.

*Drew v. Tift*, 79 Minn. 175; 81 N. W. 839.



But if the act is construed as a property tax it is void:

*Cope's Estate*, 191 Pa. St. 1; 43 A. 79.

*Chambe v. Durfee*, 100 Mich. 112; 58 N. W. 661.

*Re Fox*, 154 Mich. 5; 117 N. W. 558.

It is distinct from a legacy duty.

*Thompson v. Advocate General*, 12 Cl. & F. 1.

It is not a penalty.

*Re Strobe*, 52 Pa. St. 181.

Nor a forfeiture.

*Arnard v. Arnard*, 3 La. Ann. 337.

*Carpenter v. Pennsylvania*, 17 How. (U. S.) 456, 462.

The Legislature has inherent power to impose inheritance taxes:

*Snyder v. Bettman*, 190 U. S. 249; 23 S. Ct. Rep. 803.

*Curry v. Spencer*, 61 N. H. 624.

*State v. Lancaster*, 4 Neb. 537.

*Re Nettleton*, 76 Conn. 235; 56 A. 565.

*Re Joslyn*, 76 Vt. 88; 56 A. 281.

*Re Inheritance Tax*, 23 Colo. 492; 48 Pac. 535.

*State v. Clark*, 30 Wash. 439; 71 Pac. 20.

## 2. The Privilege Taxed.

It is obvious that the authorities are unanimous in declaring that an inheritance tax is not and cannot be a tax on property without violating the constitutional principles of uniformity and equality. They also agree that such a tax is an excise or impost upon the right or privilege of transmitting property from the dead to the living.

It is equally apparent that there is some confusion or inaccuracy as to whether the inheritance tax imposed by a particular statute is on the right to transmit, the right to receive, or both. It is described as a succession tax on the right to receive by the courts of Colorado, Connecticut, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, Ohio, Vermont, Virginia and Washington.

It is referred to as a bonus, premium or excise on the right to control the disposition of property after death by the courts of Louisiana, Tennessee and Wisconsin; but the statutes under construction were distinctly succession taxes on the shares of each beneficiary.

It is described as a tax on both the right to devise and the right to inherit by the leading cases in California, Illinois, Maine, Massachusetts, New York, South Dakota, and the United States Supreme Court.

In truth the rights can scarcely be separable, for, if there is a transfer, and the tax is on that transfer, there must be a transferrer and a transferee. No court adopting one theory denies that the other is equally tenable. Clearly if the Legislature has power to tax the privilege of transmitting it must also have the power to tax the privilege of receiving and vice versa.

These distinctions, however, may affect materially the incidence of the tax. Four distinct taxes are levied in England, death duties, legacy duties, succession duties and estate duties.

In this country the courts of Connecticut alone seem to use the phrase "death duties" in describing inheritance taxes.

*Appeal of Hopkins*, 77 Conn. 644; 60 A. 657.

*Corbin v. Baldwin*, 92 Conn. 99; 101 A. 834.

An excise on the privilege of receiving property from the dead is held in Massachusetts to be included in the term "commodity" as employed in the constitution of that State.

*Dana v. Dana*, 226 Mass. 297; 115 N. E. 818.

A tax on inheritance is held to include succession by will as well as by the intestate laws.

*Knox v. Emerson*, 123 Tenn. 409; 131 S. W. 972.

*Re White*, 42 Wash. 360; 84 Pac. 831.

A legacy tax would not seem to include real estate; but a succession tax does.

*Re Macky*, 45 Colo. 316; 102 Pac. 1075.

*Neilson v. Russell*, 76 N. J. L. 655; 71 A. 286.

*Thompson v. Advocate General*, 12 Cl. & F. 1.

The most important and far reaching distinction, however, in the theory of the tax is the tax levied upon the estate of the deceased because of the power of the State to control the disposition of the property at death and a tax upon the beneficiaries based upon their right to receive the property conferred upon them by grace of the taxing power.

If the tax is on the right to transfer it is on the entire estate without reference to the beneficiaries. This is practicable as long as it is a "flat rate," such as is imposed on the whole estate by the statutes of Rhode Island and was formerly imposed in New York.

The difficulty arises when graded rates are imposed on the right to transmit, viz., upon the entire estate, without reference to the beneficiaries. If the estate is \$1,000,000 and there are legacies of \$100,000 to three heirs of different degrees of relationship and a residuary of \$700,000, and the tax is on the whole estate \$50,000, at one rate, \$100,000 at another rate and the whole is paid out of the estate as a debt the entire tax falls on the residuary legatees. This has been the interpretation placed upon the Federal act by the New York Appellate Division.

*Matter of Hamlin*, 185 App. Div. 183; aff. 226 N. Y. 407.

On the other hand, if the tax is apportioned among the beneficiaries a specific legatee will pay a higher tax where the estate is large than will a legatee of the same amount where the estate is small.

*Knowlton v. Moore*, 178 U. S. 41; 20 S. Ct. Rep. 747.

These considerations are more fully discussed when we review the present Federal statute.

The right to transmit, being a single right, should be uniformly taxed, without rates graded in proportion to the amount of the transfer. Graded rates have thus far only been sustained when the tax is on the succession and is apportioned among the beneficiaries. Whether they are constitutional when imposed on the right to transfer without reference to the transferee remains to be determined.

*State v. Ferris*, 53 Ohio St. 314; 41 N. E. 579.

*Knowlton v. Moore*, 178 U. S. 41, 76; 20 S. Ct. Rep. 747.

An exception to this general rule seems to be found in Utah. The highest court of that State has sustained the statute of 1915 which imposed a tax of 3% on the first \$15,000 and of 5% on the balance of an estate of \$25,000. This would appear to be out of harmony with the general principles of Inheritance Taxation.

*Re Hone's Estate* (Utah), 166 Pac. 990.

### 3. Practical Applications of the Rule.

#### a. NOT A DIRECT TAX TO BE APPORTIONED AMONG THE STATES.

The results of the doctrine that inheritance taxes are not imposed upon property but upon privilege are far reaching, as a few of its practical applications will illustrate.

The Federal inheritance tax of 1898 was construed as an excise or impost and not a direct tax and was not required to be apportioned among the States in proportion to their population.

*Knowlton v. Moore*, 178 U. S. 41; 20 S. Ct. Rep. 747.

The court said: "It is apparent that if imposts, duties and excises are controlled by the rule of intrinsic uniformity the methods usually employed at the time of the adopting of the constitution in all countries in the levy of such taxes would have to be abandoned." And again—at page 109, "Taxes imposed with reference to the ability

of the person upon whom the burden is placed to bear the same have been levied from the foundation of the government.”

**b. RULES AS TO UNIFORMITY AND EQUALITY ARE MODIFIED.**

It is obvious that it is impossible to enact any law whose incidence shall at all times be just and perfect.

2 Kent. Com. 332.

“Perfectly equal taxation will remain an unattainable good as long as laws and governments and men are imperfect.”

*Grim v. School District*, 57 Pa. St. 433, 437.

“In any system of taxation, however wisely framed, disproportionate shares of the public burden will occasionally be thrown on some persons.”

*State v. Smith*, 158 Ind. 543, 549.

While this is true as to general taxation it is still more difficult equitably to adjust the burdens of Inheritance Taxation and in imposing such taxes the Legislature may discriminate between classes of persons and kinds of property.

*Maxwell v. Edwards*, 89 N. J. L. 446; 99 A. 138.

**c. POWER TO LEVY NOT INCLUDED IN MUNICIPAL CHARTERS.**

Authority to levy inheritance taxes is not included in the general power of taxation delegated to municipalities in their charters and such public corporations can only impose them under powers expressly conferred by the Legislature.

*Schoolfield v. Lynchburg*, 78 Va. 366.

*Wytheville v. Johnson*, 108 Va. 589; 62 S. E. 328.

**d. PROPERTY OTHERWISE EXEMPT MUST BE INCLUDED.**

This is so as to United States Government bonds.

*Matter of Sherman*, 153 N. Y. 1; 46 N. E. 1032.

*People ex rel. U. S. A. P. P. Co. v. Knight*, 174 N. Y. 475; 67 N. E. 65.

*Plummer v. Coler*, 178 U. S. 115; 20 S. Ct. Rep. 829.

*Wallace v. Myers*, 38 Fed. 184.

*Murdock v. Ward*, 178 U. S. 139; 20 S. Ct. Rep. 775.

Also as to a bequest to the United States Government.

*Matter of Cullom*, 76 Hun, 610; 27 Supp. 1105; aff. 145 N. Y. 593; 40 N. E. 163.

*Matter of Merriam*, 141 N. Y. 479; 36 N. E. 505; aff. 163 U. S. 625; 16 S. Ct. Rep. 1073.

All property exempt by general statutes from taxation is none the less subject to inheritance taxes on its transfer.

*McKenna's Estate*, 25 S. Dak. 369; 126 N. W. 611.

*Matter of Kucielski*, 144 App. Div. 100; 128 Supp. 768.

Thus where the State constitution limited the valuation of mining claims to the price paid therefor to the United States Government they must none the less be inventoried at their full value for the purposes of taxing their transfer by inheritance.

*Touhy's Estate*, 35 Mont. 431; 90 Pac. 170.

#### e. CONSTRUCTION OF CONTRACTS.

The rule often affects the construction of contracts. For example, provisions in a ninety-nine year lease whereby the lessee is to pay "taxes, charges and assessments," do not require him to pay the inheritance tax imposed by reason of the death of the lessor because the tax is on the transfer and not on the property.

*North Trust Co. v. Buck*, 263 Ill. 222; 104 N. E. 1114.

#### f. PERSONALTY OF RESIDENT TAXED, THOUGH IN FOREIGN JURISDICTION.

Intangible assets of a resident decedent, though located in a foreign jurisdiction, must be included in the valuation of his estate, even though they have been distributed elsewhere.

*Bullen v. Wisconsin*, 240 U. S. 625; 36 S. Ct. Rep. 473.

A well-considered case in Massachusetts thus explains the rule:

“But whatever the form of the tax, the succession takes place and is governed by the law of the domicile; and, if the actual situs is in a foreign country, the courts of that country cannot annul the succession established by the law of the domicile. (*Dammert v. Osborn*, 141 N. Y. 564; 35 N. E. 1088.) In further illustration of the extent to which the law of the domicile operates, it is to be noted that the domicile is regarded as the place of principal administration, and any other administration is ancillary to that granted there. Payment by a foreign debtor to the domiciliary administrator will be a bar to a suit brought by an ancillary administrator subsequently appointed. (*Hutchins v. State Bank*, 12 Met. 421; *Martin v. Gage*, 147 Mass. 204, 17 N. E. 310.) And the domiciliary administrator has sufficient standing in the courts of another State to appeal from a decree appointing an ancillary administrator. (*Smith v. Sherman*, 4 Cush. 408.) Moreover, it is to be observed, if that is material, that there has been no administration in New York, that the executor was appointed here, and has taken possession of the property by virtue of such appointment and must distribute it and account for it according to the decrees of the courts of this commonwealth. To say, therefore, that the succession has taken place by virtue of the law of New York would be no less a fiction than the petitioners insist that the maxim *mobilia sequuntur personam* is when applied to matters of taxation.”

*Frothingham v. Shaw*, 175 Mass. 59; 55 N. E. 623.

In sustaining the right to tax personal property of a resident, though out of the State, the Connecticut court reasons thus:

“The same principle of universal jurisdiction of a State to determine the succession to and distribution of personal property situate within other States recognizes the power and duty of such States to provide local administrations in respect to such property in aid of the administration

of the domicile. And our succession tax is computed with reference to the value of the whole beneficial succession which passes by force of our law and payment of the tax thus computed is required from the principal administrator although some portion may be actually received by a beneficiary at the hands of an ancillary administrator."

*Hopkins' Appeal*, 77 Conn. 644, 653; 60 A. 657.

So, it is held in California, that personal property of a resident decedent dying testate or intestate, located outside of the State, and which is never brought into the State for purposes of administration, is subject to an inheritance tax in that State under the application of the familiar maxim *mobilia personam sequuntur*, for by this rule the right of succession to such property is governed by the law of the domicile and not by the law of the locality of the property. This rule is subject to the limitation that there be no rule to the contrary in the State where the personal property is actually located. But there is no rule to the contrary in Massachusetts. The fact that the State in which the personal property is distributed on ancillary administration also imposes an inheritance tax does not violate any principle of constitutional law against double taxation.

*Matter of Hodges*, 50 Cal. Dec. 15.

"The fact that the petitioner was able to obtain a transfer of a large part of the stock before the will was proved in this commonwealth does not affect his duty under the statute to pay the tax."

*Greves v. Shaw*, 173 Mass. 205; 53 N. E. 72.

On the other hand the mere fact that an executor of a foreign decedent resides within the State does not make him subject to its laws in his capacity as executor or render the property over which the court of another State



has given him jurisdiction liable to taxation in the State where he resides.

*Commonwealth v. Peebles*, 134 Ky. 121; 119 S. W. 774.

The court said:

“One may occupy the two relations, of individual and executor; and, as individual, he may be subject to the laws of one State, and in his official capacity, he may be subject to the laws of another State, and he may, as executor, have the legal ownership of property over which the courts of the State in which he resides have no jurisdiction.” So the fact that an executor of an Ohio decedent who qualified in Ohio was domiciled in Kentucky did not render the assets of the Ohio decedent in the hands of the Kentucky executor liable to the tax in Kentucky.

g. INTANGIBLES OF NON-RESIDENT WITHIN THE JURISDICTION TAXABLE.

On the same theory it is reasoned that a State may tax the intangible property of a non-resident when within its jurisdiction.

“The tax is on the transmission of the property being in the State and no reason has been assigned nor can be suggested why the broad language of the statute and the evident design of the Legislature should be so narrowed and restricted as to exempt from this tax the property of a non-resident actually here notwithstanding that the same property may for other purposes be treated as constructively elsewhere.”

*State v. Dalrymple*, 70 Md. 294; 17 A. 82.

The right to succeed to property of a non-resident having its situs in New Jersey is taxable there.

*Carr v. Edwards*, 84 N. J. L. 667; 87 A. 132.

h. DOUBLE TAXATION.

This is the logical result although the courts declare

that it is to be avoided if it is within the power of reason to do so.

*Matter of James*, 144 N. Y. 6, 11; 38 N. E. 961.

*Matter of Cooley*, 186 N. Y. 220, 227; 78 N. E. 939.

*State v. Davis*, 88 Kan. 849; 129 Pac. 1197.

The difficulty is that the Legislatures of the several States having the power insist upon using it,—and the decisions confirm that power.

A few cases will illustrate:

“It has before this been pointed out (*Blackstone v. Miller*, 188 U. S. 189) that one State imposes a succession tax upon the theory or the fiction that the situs of the personal estate is the domicile of the owner while another State imposes it upon the ground that the actual situs is within the State and the same State may assume either position as the domicile of the decedent or the presence of the property within the State requires it.”

*Stanton's Estate*, 142 Mich. 491; 105 N. W. 1122.

Though Pennsylvania consistently adheres to the taxation of intangibles at domicile of owner and not within the State under ancillary administration;

*McKeen v. Northampton County*, 49 Pa. St. 519.

When the distribution and administration are to be made by the Pennsylvania courts held taxable.

*Lewis' Estate* 203 Pa. St. 211, 217; 52 A. 205.

“The fact that two States dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds. (*Blackstone v. Miller*, 188 U. S. 189, 206, 207; 23 S. Ct. Rep. 277.) The fact that the property may be subject to a similar burden in another State does not deprive this State of its power to impose the tax here upon

the property which passes by inheritance or by will under our laws.”

*Mann v. Carter*, 74 N. H. 345, 352; 68 A. 130.

“The great weight of authority favors the principle adopted by the New York Court of Appeals holding that the tax imposed is on the right of succession under a will or by devolution in case of intestacy, and that as to personal property its situs, for the purpose of a legacy or succession tax, is the domicile of the decedent, and the right to its imposition is not affected by the statute of a foreign State, which subjects to similar taxation such portion of the personal estate of any non-resident testator or intestate as he may take and leave there for safe keeping or until it should suit his convenience to carry it away.”

*Hartmann's Appeal*, 70 N. J. Eq. 664, 667; 62 A. 560.

The leading case is *Matter of Blackstone* which arose in New York, was decided by the Appellate Division, 69 App. Div. 127; 74 Supp. 508, was affirmed by the Court of Appeals without opinion 171 N. Y. 682; 64 N. E. 1118, on the authority of *Matter of Houdayer*, 150 N. Y. 37; 44 N. E. 718. It then went to the United States Supreme Court.

The testator, a resident of Illinois, had \$4,840,000 on deposit with New York bankers and both States imposed inheritance taxes. The appeal was from the tax sought to be collected by the New York State Comptroller.

The United States Supreme Court said, in sustaining the tax: “No doubt this power on the part of two States to tax on different and more or less inconsistent principles leads to some hardship. It may be regretted also that one and the same State should be seen taxing on the one hand according to the fact of power and on the other, at the same time, according to the fiction that in successions after death *mobilia sequuntur personam* and domicile governs the whole, but these inconsistencies infringe no rule of constitutional

law. If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise or, in other words, if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax. But it is plain that the transfer does depend upon the law of New York not because of any theoretical speculation concerning the whereabouts of the debt but because of the practical fact of its power over the person of the debtor. What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay."

*Blackstone v. Miller*, 188 U. S. 189, 205; 23 S. Ct. Rep. 277.

## **B.—THE TRANSFER TAKES PLACE AT DEATH.**

This rule is almost equally important in the law of Inheritance Taxation as is the rule that the tax is on the transfer of property and not on property itself.

It is not a transfer between the living that is taxed, but a transfer from the dead hand to the living hand; and therefore it is the doctrine, subject to certain limitations and exceptions (see part B-7), that the transfer which is the subject of the tax takes place at death.

And this applies to all forms of Inheritance Taxation. "Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing of an estate or a succession, legacy taxes, estate taxes or privilege taxes, nevertheless tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested."

*Knowlton v. Moore*, 178 U. S. 41, 56; 20 S. Ct. 747.

## 1. Vested Right of the State.

The right of the State to the tax is coincident with the devolution of title or interest, and the right of the State to exact a tax, as well as the obligations of the transferee to pay it, depend not upon a formal, complete and immediate change of title or possession, but upon the instant right to a beneficial share or interest subject only to the due administration of the estate.

*Matter of Ramsdill*, 190 N. Y. 492; 83 N. E. 584.

This same rule was recently enunciated by the Supreme Court of Massachusetts in construing a similar statute where that court said: "The rights of all parties, including the right of the commonwealth to its tax, vest at the death of the testator. It is true that the interest of a legatee is subject to an accounting, but it is an interest in the existing fund, and it is analogous to that of a *cestui que trust*."

*Kingsbury v. Chapin*, 196 Mass. 533; 82 N. E. 700.

"The transfers take place necessarily at the moment of death, for the will on the one hand and the intestate laws on the other operate and speak from that date."

*Matter of Seaman*, 147 N. Y. 69; 41 N. E. 401.

*Matter of Abraham*, 151 App. Div. 441; 135 Supp. 891.

*Matter of Meyer*, 83 App. Div. 381; 82 Supp. 329.

The effect of the rule has been strikingly illustrated in two cases in New York.

In *Matter of Dreyfous*, 18 Supp. 767, 28 Abb. N. C. 27, the decedent died on the same day that the amendment of 1891, chapter 215, was signed by the Governor, but death occurred a few hours before the signature. It was held that the amendment did not apply.

On the other hand, where it was stipulated that death occurred on the same day the amendment was signed by the

Governor, but a few hours after the signature, it was held that the amendment applied.

*Matter of Lane*, 157 App. Div. 694; 142 Supp. 788.

It is therefore important that the Governor or his secretary make a memorandum of the hour the act was signed and it is the practice of New York executives to do so.

Ordinarily it is a simple matter to fix the day and even the hour of death, but the possibilities of complexity in the matter of Inheritance Taxation are illustrated by a case which recently arose in New York. An intestate had disappeared and had been absent for more than seven years. A decree was entered in the Surrogate's Court of New York county judicially declaring him dead pursuant to the statute in regard to presumptions in such cases. The question was when did he die, and what statute was applicable to the taxation of the inheritance? The court held that the date of death for the purpose of Inheritance Taxation was not the date of the decree judicially adjudging him dead but that the date should be fixed by reckoning seven years from the date of his disappearance.

*Matter of Rowe*, 103 Misc. 111; 170 Supp. 742.

The learned Surrogate said: "There seems to be a difference of views as to whether or not there is any presumption that such a person remained alive during the seven-year period and died at its expiration (Lawson, Presump. Ev. rule 43; Jones, Ev. § 62, note to *Butler v. Supreme Court I. O. Foresters*, 26 L. R. A. [N. S.] 294), but that the presumption of death now exists in this State is no longer open to discussion in this court. In *Matter of Wagener*, 143 App. Div. 286, 128 N. Y. Supp. 164, it was held that the general rule that an absentee who had not been heard from for seven years may be presumed to be dead at the expiration of the seven years for the purposes of the distribution of his estate is well settled, and in a case similar to this one the court, in *Matter of Benjamin*, 155 App. Div. 233, 139 N. Y. Supp. 1091, in reversing the court below, said:

This court has so recently laid down rules as to the presumption of death arising from long-continued and unexplained absence that no further discussion of that question is now required.”

The Legislature of California sought to exempt a bequest to Leland Stanford university by the will of its founder; but the court held that the right of the State to the tax vested at Stanford's death and could not be given away. It said: “It is only by virtue of the statute that an heir is entitled to receive any of his ancestor's estate; and the Legislature can provide that the whole or only a portion shall go to the heirs or other beneficiaries upon the death of the ancestor. This being so, and the Legislature in this case having determined that 95% of the decedent's estate may go to his heirs, and the 5% be retained by the State, it is too clear for argument that this 5% vested in the State at the same time that the other 95% vested in the heirs.”

*Stanford's Estate*, 126 Cal. 112; 54 Pac. 259; 58 Pac. 462.

The result of this doctrine was strikingly illustrated in the recent case of *National Safe Deposit Co. v. Stead*, 250 Ill. 284; 95 N. E. 973, where the right of the State to inspect the contents of a decedent's safe deposit box was challenged. In sustaining the right the court reasoned thus: The relation between a safe deposit company and the lessee of one of its boxes is that of bailor and bailee. Its duty is to deliver the property on the death of the lessee. The right to succeed to the property is purely statutory. The inheritance tax is on the right to succeed to property and not on the property. Therefore under the tax, the State has a vested financial right in the estate of the decedent, and therefore it has a right to know what property is in the safe deposit box.

Another apt illustration is afforded by *Matter of White*, 208 N. Y. 64; 101 N. E. 793. Here the testator died in March, 1908, leaving a life estate to a grandson with

remainder to an exempt charity. The grandson died in November, 1908, before the estate was distributed, and the Appellate Division held that the actual duration of the life tenant's life was the measure of its value. But the Court of Appeals applied the doctrine that the tax was on the transfer and that the transfer took place at the death of the testator. At the date of that death the grandson's expectation of life was about 35 years, and the court held that the value of the life estate was to be determined, not by the actual duration, but the theoretical expectation of life. The court said at page 67: "The true test by which the tax is to be measured is the value of the interest or estate transferred at the time of the transfer thereof. The interest of the life beneficiary accrued on the death of the testatrix and its value as of the time of that occurrence is the sum to which the rate per cent as fixed by the statute should be applied."

## 2. Renunciation by Legatee.

An apparent exception to the rule that the right of the State to the tax vests at death is found in the right of a legatee to renounce his legacy. Obviously this would make no difference if all beneficiaries were taxed alike; for the renounced legacy must either pass under the residuary clause or by intestacy and so be taxed. It is therefore the act of the State itself in exempting or taxing at a lower rate that defeats or abridges its vested interest. A distributee in case of intestacy cannot renounce so as to avoid the tax.

This principle was illustrated in *Matter of Wolfe*, 89 App. Div. 349; 85 Supp. 949; aff. 179 N. Y. 599; 72 N. E. 1152. Executors who would have been taxed at the 5% rate renounced and the property passed to testator's children under the residuary clause who were taxable at 1%. The



State claimed a vested right to the 5% rate. The court held that the tax must be imposed as the property actually passed.

To the same effect is *Owings v. State*, 22 Md. 116.

This presents a theoretical difficulty. If the right of the legatee vests at death and at that instant the right of the State vests also, the act of the beneficiary should not affect the vested right of the State. As far as the legatee is concerned, of course, he cannot be forced to accept a gift and the transfer to him is not complete until he does accept it. The theory is, therefore, that there is no transfer to the legatee but that the property passes under the residuary clause or as in case of intestacy and the tax is imposed upon the transfer that actually takes place.

Where heirs may claim either under a deed delivered *inter vivos*, but not recorded, or under a will; and they elect to take under the deed and renounce the devise under the will there is no transfer under the latter.

*Matter of Mather*, 90 App. Div. 382; 85 Supp. 657; aff. 179 N. Y. 526; 71 N. E. 1134.

By an extension of the same doctrine it is held that a legatee may accept in part and renounce in part, leaving the balance to pass under other provisions of the will.

*Matter of Merritt*, 155 App. Div. 228; 140 Supp. 13.

A legatee under a power of appointment may renounce in the same way that he can decline to accept any other legacy.

*Matter of Chauncey*, 168 Supp. 1019.

A recent case in Massachusetts affords an illustration of the importance of good legal advice in the matter of Inheritance Taxation. In pursuance of an ante-nuptial agreement a man devised a legacy to his wife. She accepted the legacy in lieu of the amount due under the agreement. It was therefore subject to the tax. If she had re-

nounced and collected cash under the agreement the court held there would have been no tax, but she elected to take the bonds devised by the will and had to pay it. Obviously, if the tax were on the estate, for the right to transfer and not upon the beneficiary no such distinction could arise.

*Hill v. Treasurer*, 227 Mass. 331; 116 N. E. 509.

### **3. Law in Force at Date of Proceedings Controls Procedure Only.**

As to procedure the law in force at the date of the proceedings controls but as to substantive rights, the law in force at the date of death.

*Estate of Woodard*, 153 Cal. 39; 94 Pac. 242.

*Estate of Kennedy*, 157 Cal. 517, 526; 108 Pac. 280.

*Matter of Abraham*, 151 App. Div. 441; 135 Supp. 891.

*Matter of Sloan*, 154 N. Y. 109; 47 N. E. 978.

*Matter of Davis*, 149 N. Y. 539, 545; 44 N. E. 185.

In the *Davis* case, above cited, the court said: "It is a general rule that, in the absence of words of exclusion, a statute which relates to the form of procedure or the method of attaining or defending rights, is applicable to proceedings pending and subsequently commenced. Hence the rights of the parties depend upon the statute of 1885, while the method of procedure is governed by that of 1892."

### **4. Rates Fixed at Death Cannot be Increased.**

This rule is illustrated by a recent case in Maryland. A testator devised a life use with remainder to collaterals. At the date of his death, under the act of 1902, the tax upon the inheritance of the collateral remaindermen was 2½%. In 1908 the rate was increased to 5% upon collateral inheritances. The life tenant died after the 1908 statute went into effect. Under the Maryland law the collection of the tax upon remainders is or may be postponed until the life tenant dies. The State claimed a tax at the rate of 5%, but the court held that the rate as fixed by the statute at

the death of the testator and not the rate prevailing at the death of the life tenant applied.

*State v. S. D. & T. Co. of Baltimore*, 103 A. 435.

### 5. Rights Vested Prior to Death Cannot be Taxed.

As the transfer is at death rights which vested prior to the transfer cannot be taxed. So where testator died prior to the statute, leaving a life estate and remainders, it was held that the transfer does not take place at the death of the life tenant for the right to the remainder vested at the death of the testator and the statute could not tax a transfer which had already taken place.

*Matter of Pell*, 171 N. Y. 48; 63 N. E. 789.

*Commonwealth v. Wellford*, 114 Va. 372; 76 S. E. 917.

So a trust deed reserving a life estate vests the remainder at the date of the deed and the transfer is not taxable under a subsequent statute.

*State ex rel. Toser v. Probate Court*, 102 Minn. 268; 113 N. W. 888.

In another case a testatrix made a deed in 1896 reserving a life estate with power of revocation which was never exercised and by will devised the same property to the grantee of the deed. She died October 20, 1906, and the transfer tax act became a law March 15, 1906. Held that nothing passed under the will as the life estate expired when she died and that the statute could not tax the transfer by deed made ten years before.

*Commonwealth v. McCauley's Executor*, 166 Ky. 450; 179 S. W. 411.

The principle is well illustrated by two New York cases. In *Matter of Harbeck*, 161 N. Y. 211; 55 N. E. 850, the testator died in 1896 exercising a power of appointment created by the will of an ancestor dying in 1878, prior to the enactment of the transfer tax statute. The court held that the effect of the exercise of the power was to write the names of the appointees into the will of the creator of the

power and that the beneficiaries took under that will and therefore their interests so acquired were not subject to the tax. The Legislature then amended the act to tax the exercise of the power as though the property passing under its exercise belonged absolutely to the donee of the power. This amendment came up for construction in *Matter of Dows*, 167 N. Y. 227; 60 N. E. 439. The power in that case was created under the will of a testator dying in 1880, prior to the statute, and was exercised by the will of a testator dying in 1899, after the statute. It was held that the Legislature had a right to declare that the transfer took place on the exercise of the power and not at its creation and that the transfer was therefore taxable. This was sustained in *Orr v. Gilman*, 183 U. S. 278; 22 S. Ct. Rep 213.

To the same effect is

*Miller v. McLaughlin*, 141 Mich. 425; 104 N. W. 777.

## 6. Gains or Losses During Administration.

As the transfer takes place at death and the tax then accrues, interest that accrues or other gains during administration are not taxed — as the transfer has already taken place and they are the property of the living and not of the dead.

*Re Williamson*, 153 Pa. St. 508; 26 A. 246.

*Matter of Vassar*, 127 N. Y. 1; 27 N. E. 394.

Of course as to interest accrued prior to death, it belonged to the decedent and must be valued as part of the estate.

*Matter of Hewitt*, 181 N. Y. 547; 74 N. E. 1118.

The practical application of this rule has sometimes worked serious hardships as when an equity of redemption, valued on appraisal at \$8,000, was wiped out by a mortgage foreclosure.

*Matter of Meyer*, 209 N. Y. 386; 103 N. E. 713.

When the executor was forced to sell stocks at a loss during administration which caused a shrinkage of nearly one-fourth of the estate the tax was imposed on the value at death and no deduction was allowed.

*Matter of Penfold*, 216 N. Y. 163; 110 N. E. 497.

In enforcing the rule despite this apparent injustice the court said:

“It is by statute due and payable at the time of the transfer, that is, at the death of the decedent. It accrues at that time and the amount of the tax is not affected by an increase or decrease in the clear market value of the estate between the date of the decedent’s death and its subsequent distribution among beneficiaries or transferees under the will. The necessity for certainty and uniformity in the time when the tax accrues and becomes due and payable required the adoption by the Legislature of a fixed and arbitrary rule.”

The rule was applied in California in a still harsher case where the executor embezzled \$98,000 and the beneficiaries never received the money.

*Hite’s Estate*, 159 Cal. 392; 113 Pac. 1072.

But the tax is imposed before it reaches the legatee and before it has become his property.

*Matter of Finnen*, 196 Pa. St. 72; 46 A. 269.

*Matter of Hartmann*, 70 N. J. Eq. 664; 62 A. 560.

In view of this obvious injustice the Federal statute (see p. 619) and the inheritance tax law of Rhode Island adopted in 1916 allow a deduction for certain losses during administration except a fall in the market price of stocks. On the other hand Montana taxes any increase during administration including increase in value of securities.

*Matter of Tuohy*, 35 Mont. 431; 90 Pac. 170.

Curiously enough both the Rhode Island statute and the

Federal act impose a tax upon the right to transmit. Obviously such a tax must accrue at death and not upon distribution which makes the deduction for losses after death distinctly an act of grace.

Its justice and propriety however are so apparent that these statutes will doubtless be followed in other States as their acts are amended in the light of experience with the practical application of the transfer tax laws.

## 7. Exceptions to the Rule.

The general rule that the transfer takes place and all rights accrue at death is subject to two exceptions.

### a. BY NATURE OF THE TRANSFER.

Where there is a trust deed reserving a life estate and a tax is by the statute imposed upon such a transfer the law in force at the date of the trust deed governs.

*Matter of Keeney*, 194 N. Y. 281, 287; 87 N. E. 428.

*Keeney v. New York*, 222 U. S. 525, 530; 32 S. Ct. Rep. 105.

*Matter of Webber*, 151 App. Div. 539; 136 Supp. 83.

*State ex rel. Tozer v. Probate Court*, 102 Minn. 268; 113 N. W. 888.

*Commonwealth v. McCauley's Executor*, 166 Ky. 450; 179 S. W. 411.

*Matter of Garcia*, 101 Misc. 387.

But where power to revoke is reserved the transfer is not complete and the tax accrues at death.

*Line's Estate*, 155 Pa. St. 378; 26 A. 728.

*Matter of Dana*, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710.

The same rule was applied where a deed was delivered to a third party to be delivered to the grantee reviewed therein after death and no tax was imposed.

*Hunt v. Wicht*, 174 Cal. 205; 162 Pac. 639.

Where there is a transfer in contemplation of death the tax accrues not at death, but at the date of such transfer,

even though no proceedings may be had for its collection until after the death of the donor.

*Matter of Garcia*, 183 App. Div. 712, 717; 170 Supp. 980.

*Matter of Hodges*, 215 N. Y. 447; 109 N. E. 559.

*Felton's Estate* (Cal.), 169 Pac. 392.

b. BY STATUTE.

The Legislature has power to declare that the tax shall accrue at any time while the law retains control of a decedent's property and so may retroactively be applied to estates still in process of distribution, though the owner died prior to the statute, on the theory that the tax is on the right to receive and may be imposed on the legatee's interest at any time before he actually receives the property.

*Cahen v. Brewster*, 203 U. S. 543; 27 S. Ct. Rep. 174.

*Ferry v. Campbell*, 110 Ia. 290, 299; 81 N. W. 604.

*Gelsthorpe v. Furnell*, 20 Mont. 299; 51 Pac. 267.

The rule would not seem to be in accord with the logic of the doctrine which lies at the root of the taxation of transfers of non-resident property within the State. The transfer itself takes place by virtue of the control which the courts of the situs exercise over the property, but the will of the non-resident takes force and effect by reason of the statutes of the State of domicile and the personal property is distributed under the intestate laws of the foreign State. It is therefore only because the courts of the situs have control of the property that any tax can be imposed upon a non-resident transfer. Therefore property which is still within the control of those courts and prior to its delivery to the beneficiary would seem to be taxable even though death had occurred prior to the statute.

The situation is different with a remainder, after a life estate. In such a case the executors make their final accounting and the property is delivered to the life tenant in trust or to a trustee, or the executors cease to be personal

representatives of the deceased and become trustees for the remaindermen. That a transfer tax cannot be imposed upon the remaindermen after the life tenant or his trustee take possession would seem to be the universal rule.

*Miller v. McLaughlin*, 141 Mich. 425; 104 N. W. 777.

*Matter of Pell*, 171 N. Y. 48; 63 N. E. 789.

*Stevens v. Bradford*, 185 Mass. 439; 70 N. E. 425.

*Re Short*, 16 Pa. St. 63.

*Carpenter v. Commonwealth*, 17 How. 462.

Firmly established as the doctrine would seem to be the courts of New York rejected it in an early decision.

*Matter of Pettit*, 65 App. Div. 30; 72 Supp. 469; aff. 171 N. Y. 654; 63 N. E. 1121.

This was with regard to the property of a non-resident decedent which was still within the State and undistributed although death occurred prior to the enactment of the statute.

The New York rule seems to be followed in New Hampshire and Maine.

*Carter v. Whitcomb*, 74 N. H. 482; 69 A. 779.

*Lombard's Appeal*, 88 Me. 587; 34 A. 530.

The same rule applies to contingent remainders.

*Eury v. State*, 72 Ohio St. 448, 454; 74 N. E. 650.

Or to a legacy the payment of which is postponed until the beneficiary reaches majority.

*Matter of Cogswell*, 4 Dem. (Sur.) (N. Y.) 248.

Or to remainders vested under a contract.

*Lacy v. State Treasurer*, 152 Ia. 477; 132 N. W. 843.

It is also the rule that the statute taxing an estate after death and while it is still under the control of the State courts must be explicit in its intent or it will not be given such retroactive effect.

*Eury v. State*, 72 Ohio St. 448; 74 N. E. 650.



A premature distribution cannot defeat the statute as to personalty.

*Montgomery v. Gilbertson*, 134 Ia. 291; 111 N. W. 964.

As the title to real estate passes at death and is not held *in custodia legis* during administration distribution cannot very well be premature and the rule does not apply.

*Herriott v. Potter*, 115 Ia. 645; 89 N. W. 91.

As we have seen the statute may also allow for losses or tax gains during administration.

### C.— CLASSIFICATION.

The constitutions of most of the States require equality and uniformity in taxation; but these provisions are held to apply only to property taxes, and not to inheritance taxation.

*Booth v. Commonwealth*, 130 Ky. 88; 113 S. W. 61.

*Tyson v. State*, 28 Md. 577.

*Beals v. State*, 139 Wis. 544; 121 N. W. 347.

*Dixon v. Ricketts*, 26 Utah 215; 72 Pac. 947.

*State v. Alston*, 94 Tenn. 674; 30 S. W. 750.

*Thompson v. Kidder*, 74 N. H. 89; 65 A. 392.

The reason for this rule is clearly stated by the United States Supreme Court as follows:

“ The constitutionality of inheritance taxes is based on two principles: 1. An inheritance tax is not one on property, but one on the succession. 2. The right to take property by devise or descent is the creature of the law, and not a natural right — a privilege, and therefore the authority which confers it may impose conditions upon it. From these principles it is deduced that the States may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions, and are not precluded from this power by the provisions of the respective State

constitutions requiring uniformity and equality of taxation.”

*Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 287; 18 S. Ct. Rep. 594.

The rule is subject to this limitation. As to inheritance taxes the Legislature may make classifications, unequal and not uniform as between the classes, but both equal and uniform as to members of the same class.

*Nunnemacher v. State*, 129 Wis. 90; 108 N. W. 627.

Such a classification must not be arbitrary. It must be founded on reason and not caprice.

*Matter of Watson*, 226 N. Y. 384.

But it is not the judgment of a learned court, nor the reasoning that might appeal to such a court, that is required in order to sustain as constitutional a classification by the Legislature for purposes of taxation. There is no constitutional guarantee that taxation shall be equal. It is only necessary that it shall be equal in the sense that it shall not be arbitrary.

*People ex rel. Eismann v. Ronner*, 185 N. Y. 285, 291.

It is within the taxing power of the Legislature to discriminate and to confer exemptions.

*People ex rel. Hatch v. Reardon*, 184 N. Y. 431, 433.

Substantially the only limitations are that taxation must be based upon judgment and reason and enforced by due process of law.

*Matter of McPherson*, 104 N. Y. 306, 317; 10 N. E. 685.

Cooley on Constitutional Limitations (6th ed.), p. 587.

But the court will not substitute its judgment for legislative judgment or attempt itself to become the taxing power. It will merely see to it that the Legislature has acted upon judgment and not upon caprice. This doctrine

was clearly stated in *People ex rel. Farrington v. Mensching*, 187 N. Y. 10, as follows:

“The rule governing the subject as laid down by the Supreme Court of the United States is that there must be ‘some difference which bears a reasonable and proper relation to the attempted classification.’ It cannot be mere arbitrary selection (citing cases). By this we do not understand that great court to mean that the relation must necessarily be ‘reasonable and proper’ according to the judgment of reviewing judges, but that the court must be able to see that the legislators could regard it as reasonable and proper without doing violence to common sense. In other words, there must be enough reason for it to support an argument, even if the reason is unsound.”

Legislative classifications for the purposes of inheritance taxation have been sustained when based upon: Domicile, relationship, amount of property transferred, kind of property transferred on the payment of other taxes during the life of the deceased and on the nature of the transfer itself.

### 1. By Domicile.

Classifications by domicile are constitutional. For example, it has been held within the legislative discretion to exempt transfers to domestic charitable corporations and tax such transfers when the beneficiary is a foreign corporation.

*Board of Education v. Illinois*, 203 U. S. 553; 27 S. Ct. Rep. 171.

This is, however, based upon the general right of a State to regulate foreign corporations and permit them to do business within the State. As a general proposition a State cannot grant privileges to its own residents which it denies to citizens of other jurisdictions.

*Re Johnson*, 139 Cal. 532; 73 Pac. 424.

*State v. Hamlin*, 86 Me. 495; 30 A. 76.

This inhibition does not extend to aliens, unless their

rights are protected by treaties; and an alien is estopped to resist taxation on a devise to him on the ground that the devise is void because he is an alien.

*Scholey v. Rew*, 90 U. S. 331; 23 L. R. A. 99.

With these exceptions a classification by residence is valid, and a State may tax residents and exempt non-residents from the tax as to some or all of their property within the jurisdiction. This is one of the most common classifications known to inheritance taxation and does not seem to have ever been challenged.

## 2. By Relationship.

Relationship of a beneficiary to the decedent was one of the earliest and most obvious distinctions between taxable transfers and statutes imposing higher rates of tax upon transfers to collaterals and strangers than to lineals have universally been sustained as constitutional.

*State v. Alston*, 94 Tenn. 674; 30 S. W. 758.

*State v. Clark*, 30 Wash. 439; 71 Pac. 20.

*Re Fox*, 154 Mich. 5; 171 N. W. 558.

*State v. Switzler*, 143 Mo. 287; 45 S. W. 245.

*Eyre v. Jacobs*, 14 Gratt. (Va.) 422.

So, where the statute exempted step-children from the tax the Pennsylvania court sustained the classification of such children from other strangers to the blood, remarking that "it had nothing to do with the wisdom of legislation."

*Commonwealth v. Randall*, 225 Pa. St. 197; 73 A. 1109.

An extreme case illustrating the power of the Legislature to classify by relationship is afforded by a recent decision in South Dakota. Under the statute of that State a heavier tax is levied upon a transfer to a nephew than upon a transfer to a cousin or an aunt. Although a cousin is generally regarded as farther removed than a nephew or a niece, the court sustained the classification upon reasoning that would

sustain almost any classification, arbitrary or otherwise. It says:

“In other words, it is a declaration that the State, instead of claiming all of the estate of a decedent, will only retain a certain portion thereof, and will allow the legatees to receive the remainder and according to the wishes of the testator, but less certain sums which itself reserves. It says: ‘This property is ours, but we will allow you certain legatees to take a certain portion thereof and under certain conditions.’ One thing, indeed, is certain, and that is that none of the heirs or legatees have any vested interest in the property of a deceased person, and that the State can do away with the right of inheritance or bequest altogether. If it can do this, it can place any limitation which is not purely arbitrary on the right that it desires. The heirs are purely donees, and take by the bounty of the State. What right have any of them to complain of that which is allotted to them, if only they receive the same share as others in the same class? Has not the lord of the vineyard the right to do with his own as he pleases, and even to give to one at the eleventh hour his full penny, while denying it, or merely giving a similar amount, to one who has borne the burden and the heat of the day? It is a matter which is purely of legislative discretion. It is not one of personal right.”

### **3. By Amount of Property Transferred.**

Another ground of classification, which is the basis of the graded rates, common to nearly all the statutes, is based upon the amount of property transferred from a decedent to a beneficiary.

#### **a. WHERE THE TAX IS ON THE RIGHT TO RECEIVE.**

“Such right is derived from and regulated by municipal law; it arises from the relation of the individual to the State, and is not an inherent or constitutional right. It fol-

lows that in assessing a tax upon such right or privilege, the State may lawfully measure or fix the amount of the tax by referring to the value of the property passing, and is not precluded from this power by the provision of the constitution requiring uniformity and equality of taxation.”

*State v. Guilbert*, 70 Ohio St. 229, 255; 71 N. E. 636.

So, where the tax is based on the amount received by each beneficiary it has generally been sustained as valid. Thus, a transfer to a widow may be taxed at 1% on the first \$25,000, and at 2% on the next \$25,000 above the exemption; while a cousin may be required to pay 5% on the first \$25,000 above a smaller exemption, and 6% on the next \$25,000.

*Union Trust Co. v. Durfee*, 125 Mich. 487; 84 N. W. 1101.

*Magoun v. Illinois Savings Bank*, 170 U. S. 301; 18 S. Ct. Rep. 604.

*Knowlton v. Moore*, 178 U. S. 41; 20 S. Ct. Rep. 747.

*State v. Vance*, 97 Minn. 532; 106 N. W. 98.

But to tax one widow, who receives \$25,000, at the rate of 1%, and another widow, who receives \$50,000, at 2% on the entire bequest would seem of doubtful constitutionality.

*State v. Ferris*, 53 Ohio St. 314; 41 N. E. 579.

*State v. Switzler*, 143 Mo. 287; 45 S. W. 245.

In the *Matter of McKennan*, 25 S. D. 369; 126 N. W. 611 (reversed 130 N. W. 33), the court advanced what seems sound reasoning, though it was not sustained. It says:

“If one person receives \$20,000 and another \$10,000 it was no greater privilege for the first to receive his first \$10,000 than for the second. The increased privilege is all found in receiving of the extra \$10,000, and it is the exercise of this extra privilege, the transmission of the extra \$10,000, that should receive the extra burden of taxation.”

#### b. WHERE THE TAX IS ON THE RIGHT TO TRANSFER.

A tax on the entire estate, without reference to the beneficiaries, presents serious difficulties, where there is an

attempt to classify by the amount of the estate. The present Federal act and the statutes of Rhode Island and Utah now impose the tax, or part of it, on this theory. The tax was so imposed in New York until 1910 and courts generally have sustained taxes based on the right to transmit as distinguished from taxes on the right to receive.

*Minot v. Winthrop*, 162 Mass. 113; 38 N. E. 512.

A statute copied from the New York act by Wisconsin was thus criticised by the courts of that State in *Black v. State*, 113 Wis. 205; 89 N. W. 522:

“It is claimed that such is the effect of the present law, and we can see no escape from the conclusion. People in the same class are subject to different rules, some being exempt and some being taxed. This results from the peculiar provisions of section 19 of the law, which defines ‘estate’ and ‘property’ as construed by the New York courts before we borrowed the law. As already pointed out, under this provision the \$10,000 limitation or exemption is based on the size of the whole property devised or granted, and not upon the amount received by each individual legatee or grantee. Thus it results that one collateral relative, receiving a legacy of \$2,000 from one testator, whose estate amounts to but \$9,500, pays no tax, while another collateral relative in the same degree, receiving a legacy of \$2,000 from another testator whose estate amounts to \$10,500, is obliged to pay a tax. Here is unlawful discrimination, pure and simple. No rational distinction or difference can be drawn between the two legatees simply because the estates from which their legacies come are of slightly different size. They are both within the same class, surrounded by the same conditions, and receiving the same benefits. One pays a tax, and the other does not. This is not the equal protection of the laws.”

Notwithstanding this criticism the court sustained the exemptions it criticised.

Other and more important inequalities become obvious when progressive rates are based upon the amount of the entire estate, as exemplified by the present Federal statute. This question is fully discussed in the review of the United States statute, *post*, p. 550.

#### 4. By the Kind of Property Transferred.

Classifications based upon the kind of property transferred have been held to be within the legislative power and discretion.

##### a. REAL AND PERSONAL.

The most common classification of this nature is that afforded by the distinction between real and personal property. Though the Minnesota court held that both must be taxed in a valid statute, this has not been the general doctrine.

*Drew v. Tift*, 79 Minn. 175; 81 N. W. 839.

Many of the statutes distinguish between the real and personal estate of non-residents, and the New York act of 1887 was sustained by the Supreme Court of the United States although it taxed non-resident transfers when the non-resident had real estate in the State of New York and exempted his personal property when he did not own real estate within the State because the act afforded no machinery for collecting the tax. This was a legislative blunder afterwards cured by amendment. The court says:

“But though the operation of the statute creates a difference, this, *even if intentional*, is not, of itself, sufficient to invalidate the tax. The power of the State in respect to the matter of taxation is very broad, at least so far as the Federal constitution is concerned. It may exempt certain property from taxation while other property is subject thereto. It may tax one class of property by one method of procedure and another by a different method of procedure.”

*Beers v. Glynn*, 211 U. S. 477; *aff. Matter of Lord*, 186 N. Y. 549.



Michigan and Montana tax the transfer of personal property of non-residents within the State, but exempt the transfer of their real property.

Massachusetts, New Hampshire, Rhode Island and Vermont, on the other hand, tax the transfer of the real estate of non-resident decedents within the State, but exempt the transfer of their personal property so situated.

#### b. TANGIBLES AND INTANGIBLES.

This distinction originated in the New York act of 1911, and has been adopted by several other States. Arkansas, Connecticut, Indiana, New Jersey, Pennsylvania and Oklahoma adopt the New York classification as to tangibles and intangibles of non-resident decedents, but Pennsylvania admits the doctrine of equitable conversion as to real estate, while Arkansas, New Jersey and Oklahoma tax the non-resident transfer, even though intangible, when it consists of stock in domestic corporations.

New York found the distinction unworkable, after several years of experiment, and abandoned it altogether by the amendment of May 14, 1919.

#### c. OTHER PROPERTY DISTINCTIONS.

Under the New York act of 1916 the transfer of non-resident property was taxed when it consisted of capital invested in business within the State, but exempted money of non-resident estates deposited in New York banks. Several States tax the transfer of stock in domestic corporations held by non-residents, but do not tax non-resident transfers of stock in foreign corporations although the certificates are within the jurisdiction of the State. All this would seem to illustrate the general proposition that any reasonable classification based upon the kind of property transferred is within the constitutional power of the law-making power.

*Matter of McPherson*, 104 N. Y. 316; 10 N. E. 685.

The power of the Legislature to distinguish between different kinds of personal property in inheritance tax statutes was recently sustained by the New York Court of Appeals in *Matter of Watson*, 226 N. Y. 384, where the court said:

“In considering the constitutionality of this provision it has been suggested that while the State may enact an inheritance tax it must treat all personal property alike and cannot classify it according to nature or kind. Why this suggestion should separate personal property from realty I need not now stop to consider. That in the development of taxation personal property has varied in treatment and in disposition is evidenced by the mortgage tax law (*Eisman v. Ronner*, 185 N. Y. 285), the bank stock assessment (*Bridgeport Savings Bank v. Feitner*, 191 N. Y. 88; *Amoskeag Savings Bank v. Purdy*, 231 U. S. 373), the stock transfer tax (*People ex rel. Hatch v. Reardon*, 184 N. Y. 431; *Matter of Ball*, 161 App. Div. 731; *Matter of Church*, 176 App. Div. 910) and the special franchise tax (*People ex rel. Met. Tax Commissioners*, 174 N. Y. 417).

“In dealing with a law’s constitutionality we are examining the question of legislative powers, or, to be accurate, the limitation placed by constitutions upon power. Whether the Legislature has acted wisely, made a proper choice, created difficulties, worked hardships or been unfair to a class or to a particular kind of property is never indicative of a limitation. Limitations are to be found in the words and intentment of the constitution and the fundamental principles of government embodied therein. The taxing power, both direct and through an inheritance tax, is very broad and submits to few restrictions. Such laws need not be submitted to courts for their approval and can only meet with disapproval when some fundamental principle has been violated. In speaking of the legislative power, whether it be a police power, a taxing power or any other

power of like nature, we have no ready-made formula which can be easily applied, but must be governed by the principles developed in the law, either by a long series of legislation or by custom, or by judicial expression and application of principles. However accurate may be our logical process, we must not start with assumed premises, but with those furnished us by the authorities.”

Connecticut has also made a similar classification.

Gen. Stat. Conn., § 1190.

In New York the Legislature undertook to impose an additional tax of 5% on all investments which had not paid the stamp tax or the personal property tax during the lifetime of the decedent. The classification was condemned by the lower courts, but sustained by the Court of Appeals, which said:

“Is there not, at least, a semblance of reason in seeking to tax upon inheritance property which has not been taxed locally or for State purposes, when such fact can only be discovered upon the death of the owner? The matter at least permits of argument, and is not so capricious and whimsical as to be purely arbitrary. It has in it at least an effort for the equalization of taxation and the adjustment of the burdens of government.

“The fact that other bodies have come to the same conclusion as our own Legislature may have a slight bearing upon the element of reason in this tax and its freedom from mere arbitrary action.

“Thus Connecticut has placed an estate tax upon property upon which no town or city tax has been assessed during the year preceding death. (Section 1190, General Statutes of Conn.) And Louisiana exempts from a transfer tax property which has borne its just proportion of taxes prior to inheritance (quoted in note to *Cahen v. Brewster*, 203 U. S. 543; Art. 235 and Art. 236 of the Const. of La.; *Suc-*

*cession of Pritchard*, 118 La. Ann. 883; *Succession of Westfeldt*, 222 La. Ann. 836).

“The objection to a tax that it is an arbitrary discrimination must be approached with the greatest caution (*Hatch v. Reardon*, 204 U. S. 152, p. 158).”

## 5. By Payment of Other Taxes.

This classification was first undertaken by the constitution and statutes of Louisiana.

The Transfer Tax Act of Louisiana provides:

“The tax provided for in the preceding article shall not be enforced when the property donated or inherited shall have borne its just proportion of taxes prior to the time of such donation or inheritance.”

This portion of the act was quoted by the Supreme Court of the United States when it sustained the further provision of the Louisiana act that the tax might apply to successions not already administered even though the testator died *before* the statute. Its constitutionality was not there questioned.

*Cahen v. Brewster*, 203 U. S. 543; 27 S. Ct. Rep. 174.

The courts of Louisiana have found the classification workable and to accomplish substantial justice.

*Succession of Pritchard*, 118 La. Ann. 883; 43 So. 537.

*Succession of Fell*, 119 La. Ann. 1037; 44 So. 879.

*Succession of Stauffer*, 119 La. Ann. 66; 43 So. 928.

*Succession of Westfeldt*, 122 La. Ann. 836; 48 So. 281.

New York and Connecticut now make a similar distinction. See *ante*, p. 50.

## 6. By the Kind of Transfer.

In the very nature of the taxation of inheritances there is a classification as to the kind of transfer, and an excise on such a transfer may be imposed when there is no such tax upon similar transfers among the living. There are certain transfers akin to inheritances which still are not within the ordinary scope of death taxes. These include gifts in con-

templation of death and transfers, *inter vivos*, reserving a life estate. To single out such transfers among the living for taxation is held a proper classification.

*Matter of Keeney*, 194 N. Y. 281; 87 N. E. 428.

## D.—GENERAL RULES OF CONSTRUCTION.

### 1. Strict or Liberal.

In the early days of inheritance taxation courts were inclined rather strongly to enforce the general rule that such statutes being special taxes should be construed strictly against the State and liberally in favor of the taxpayer.

*People v. Griffith*, 245 Ill. 532; 92 N. E. 313.

*Matter of Enston*, 113 N. Y. 174; 21 N. E. 87.

*Eidman v. Martinez*, 184 U. S. 578; 22 S. Ct. Rep. 515.

*Matter of Fayerweather*, 143 N. Y. 114; 38 N. E. 278.

*Estate of Ullmann*, 263 Ill. 528; 105 N. E. 292.

So, if the tax is to be applied to the property of non-resident decedents, such transfers must be specifically included by the terms of the statute.

*U. S. v. Morris*, 27 Fed. 341.

*Wallace v. Attorney General*, L. R. 1 Ch. c. 1.

But the rule of strict construction ordinarily applied to taxing statutes, apparently, has been abandoned by the more modern authorities. The trend of the decisions seems to be that statutes taxing inheritances must be given a fair and reasonable construction to effectuate the intent of the Legislature.

*State v. Bazille*, 97 Minn. 11; 106 N. W. 93.

“While it is generally held that taxation statutes will be strictly construed against the State or taxing power, nevertheless they should be fairly and reasonably construed, so as to effectuate the intention of the Legislature in enacting such laws.”

*Conway's Estate* (Ind.), 120 N. E. 717.

It should tend rather to uphold the law than to declare it unconstitutional.

*Knox v. Emerson*, 123 Tenn. 409; 131 S. W. 972.

And should uphold the tax as to all property fairly and reasonably within its scope.

*State v. Scales*, 172 N. C. 915; 90 S. E. 439.

The words must be given their usual and ordinary meaning.

*McCluskey v. Cromwell*, 11 N. Y. 593.

*Matter of O'Neil*, 91 N. Y. 516.

*Matter of Daly*, 79 Misc. Rep. 586; 141 Supp. 199.

A construction which leads to an absurdity should be avoided.

*Howard's Estate*, 80 Vt. 489; 68 A. 513.

Effect must be given to all the words so that none are construed as void or superfluous.

*Stevens v. Bradford*, 185 Mass. 439; 70 N. E. 425.

Where a particular subject is within the scope of the law and an exemption from taxation is claimed on the ground that the Legislature has not provided proper machinery for accomplishing the legislative purpose in a particular instance a liberal rather than a strict construction should be applied, and if by fair and reasonable construction of its provisions the purpose of the statute can be carried out, that interpretation ought to be given to effectuate the legislative intent.

*Matter of Stewart*, 131 N. Y. 274, 282; 30 N. E. 184.

*Matter of Hickock*, 78 Vt. 259; 62 A. 724.

And a statute may be declared void in part and yet sustained as to the rest, if severable.

*Union Trust Co. v. Durfee*, 125 Mich. 487; 84 N. W. 1101.

*Friend v. Levy*, 76 Ohio St. 26; 80 N. E. 1036.

## 2. Exemptions.

The general rule has been that exemptions should be strictly construed against the exemption and in favor of the tax.

*Re Bull*, 153 Cal. 715; 96 Pac. 366.

*State v. N. Y. Meeting of Friends*, 61 N. J. Eq. 620; 48 A. 227.

*Re Gopsill*, 77 N. J. Eq. 215; 77 A. 793.

*Matter of Deutsch*, 107 App. Div. 191; 95 Supp. 65.

*Matter of Francis*, 121 App. Div. 129; 105 Supp. 643; aff. 189 N. Y. 554; 148 Supp. 1116.

### *Contra:*

*Matter of Mergantime*, 129 App. Div. 368; 113 Supp. 948; aff. 195 N. Y. 572; 88 N. E. 1125.

*Matter of - rnot*, 145 App. Div. 708; 203 N. Y. 627.

The exempting clause should not be enlarged at the expense of the enacting clause.

*McDowell v. Addams*, 51 Pa. St. 438.

All grants in derogation of taxation must be strictly construed.

*Packer's Estate*, 246 Pa. St. 133; 92 A. 75.

An exemption to local but not to foreign charities is valid.

*Board of Education v. Illinois*, 203 U. S. 553; 27 S. Ct. Rep. 171.

The U. S. Supreme Court holds that reasonable doubt should be resolved in favor of the taxing power.

“Exemptions from taxation are not favored by law, and will not be sustained unless such clearly appear to have been the intent of the Legislature. Public policy in all the States has almost necessarily exempted from the scope of the taxing power large amounts of property used for religious, educational, and municipal purposes; but this list ought not to be extended except for very substantial reason; and while as we have held in many cases Legis-

latures may, in the interest of the public, contract for the exemption of other property, such contract should receive a strict interpretation and every reasonable doubt be resolved in favor of the taxing power.”

*Yazoo & Miss. V. Ry. Co. v. Adams*, 180 U. S. 1; 21 S. Ct. Rep. 240.

The rule, however, has been repudiated in New York, where the Rockefeller Foundation has been held exempt under a very liberal construction of the statute.

*Matter of Rockefeller*, 177 App. Div. 786; 165 Supp. 154.

The recent trend of authorities has been to sustain the New York rule and apply a liberal rather than a strict construction to exemptions in favor of educational and charitable corporations in inheritance tax statutes.

In Massachusetts the “World Peace Foundation” was held to be exempt under the statute of that State.

*Parkhurst v. Burrill*, 228 Mass. 196; 117 N. E. 39.

In Connecticut the statute of 1915 exempted corporations receiving “State aid,” and this was held to include all corporations exempted from ordinary taxation on the theory that they thus received “State aid,” and it was squarely held that the strict construction of exemptions was not applicable to charities and educational institutions.

*Corbin v. Baldwin*, 101 A. 834.

The courts of Iowa have recently taken the same position.

*Re Spangler*, 148 Ia. 333; 127 N. W. 625.

And the more liberal rule has also been adopted in Vermont.

*Curtis' Estate*, 88 Vt. 445; 92 A. 965.

### 3. Retroactive or Prospective.

Inheritance tax statutes, like all others, are generally



construed as prospective unless expressly declared to be retroactive in their operation.

*Gilbertson v. Ballard*, 125 Ia. 420; 101 N. W. 108.

*Tilford v. Dickinson*, 79 N. J. L. 302; 75 A. 574.

*Provident Hospital v. People*, 198 Ill. 495; 64 N. E. 1031.

*Re Line*, 155 Pa. St. 378; 26 A. 728.

*Matter of Miller*, 110 N. Y. 216; 18 N. E. 139.

*Matter of Van Kleeck*, 121 N. Y. 710; 25 N. E. 50.

*Eury v. State*, 72 Ohio St. 448; 74 N. E. 650.

As we have seen, in most jurisdictions an inheritance tax may be retroactively applied to property of a decedent who died before the statute if it remains undistributed, as least as to personal property. (See *ante*, B-7-b.)

*Cahen v. Brewster*, 203 U. S. 543; 27 S. Ct. Rep. 174.

*Hostetter v. State*, 26 Ohio Cir. Ct. 702.

But vested rights cannot be affected retroactively, nor an estate be taxed after it has been distributed.

*Matter of McKelway*, 221 N. Y. 15; 116 N. E. 348.

*Succession of Stauffer*, 119 La. Ann. 66; 43 So. 928.

*Lacy v. State Treasurer*, 152 Ia. 477; 132 N. W. 843.

The only question is when those rights vest. On this the decisions are not all in accord.

A curious illustration is afforded by a case that arose in Pennsylvania. An intestate died leaving collateral heirs and an illegitimate son who was legitimatized by act of the Legislature after his father's death. It was held that the estate descended to the collateral heirs, that the Legislature could not retroactively change the succession, and that the State was entitled to collect the collateral inheritance tax.

*Galbraith v. Commonwealth*, 14 Pa. St. 258.

It is held that a statute of limitations may be construed retroactively as to an inheritance tax statute.

*Matter of Strang*, 117 App. Div. 796; 102 Supp. 1062.

*Matter of Moench*, 39 Misc. 480; 80 Supp. 222.

The ordinary rule as to exemptions is that they will not be applied retroactively.

*Re Stanford's Estate*, 126 Cal. 112; 58 Pac. 462.

*Matter of Ryan*, 3 Supp. 136.

*Sherrill v. Christ Church*, 121 N. Y. 701; 25 N. E. 50.

A different rule was applied in Maryland where a statute declared that inheritance taxes not already paid by a surviving husband on his wife's estate should not be collected. The court held that it was not strictly in the nature of an exemption but rather a release.

*Montague v. State*, 54 Md. 481.

An act to cure a constitutional flaw in a statute may be retrospective in its operation.

*Ferry v. Campbell*, 110 Ia. 290; 81 N. W. 604.

“That the Legislature may cure such defects is fundamental. Appellant's counsel say, however, that the estate vested at the death of the testator and that any change made thereon by the Legislature after his death is unconstitutional and void. As to the real estate this is true, perhaps, although it is best that we do not decide the point on the arguments before us. As to the personal estate the rule seems to be different, however. While the distributive share is a vested interest — that is, vests in point of right at the time of the death of the intestate — yet the persons who take and the amount to be received must be ascertained and determined by the probate court. So long as the entire estate remains unsettled the Legislature may cure any defects in the law creating a lien thereon and the act may be retroactive.”

So, where the distribution was delayed by the provisions of the will for many years, and an inheritance tax law was enacted in the meantime, the court held that the shares of the heirs at law were subject to the tax.

*Hostetter v. State*, 26 Ohio Cir. Ct. 702.

On the other hand, no one has a vested right to a given form of procedure, and where a statute failed to provide for due notice and a hearing, the defect can be cured retroactively. Where the original act did not provide for notice of appraisal, but notice was provided for by an amendment which was given a retroactive effect, the court said: "There was no valid objection to the levy of such a tax. That is to say, it is not an illegal or unauthorized tax. It is invalid simply because the Legislature did not provide for notice of the proceedings by which the amount of the tax is to be ascertained."

*Ferry v. Campbell*, 110 Ia. 290, 299; 81 N. W. 604.

Even a constitution is not retroactive unless the intent to make it apply to conditions prior to its adoption is clearly manifest. The Louisiana constitution of 1898 provided that the inheritance tax could not be enforced when the property in question shall have borne its just proportion of taxes prior to that. These provisions and the provisions of the Louisiana statutes carrying these articles of the constitution into effect do not reach back to conditions anterior to the constitution itself, and where taxes due in 1878 and 1883 on certain lands had not been paid the collector urged that it made no difference how far back in the past the failure to pay taxes may have occurred nor who the owners of the lot may have been at that time; but the court held that taxes due before the passage of the constitution are not included.

*Succession of Westfeldt*, 122 La. Ann. 836; 48 So. 281.

Statutes have been held not retroactive as to gifts in contemplation of death.

*Felton's Estate*, 176 Cal. 663; 169 Pac. 392.

Nor as to gifts to take effect at or after death where the property had been delivered to a third party.

*Hunt v. Wicht*, 174 Cal. 205; 162 Pac. 639.

#### 4. Statutes Held Invalid.

In 1897 Pennsylvania enacted a direct inheritance tax which was declared unconstitutional as a tax on property, though it was substantially copied from statutes sustained in other States on the theory of a tax on privilege; but the court is careful not to say that a statute might not be sustained on the privilege theory if so worded as to be clearly an excise.

*Cope's Estate*, 191 Pa. St. 1; 43 A. 79.

This decision is not an authority in other States as it is based on the peculiar wording of the Pennsylvania Constitution. The original collateral inheritance tax was enacted in that State in 1826, prior to the present constitution.

Inheritance tax statutes, under various clauses of State constitutions, have been held invalid, generally because they were in form taxes on property and not on the transfer, and therefore unequal, or the Legislature was regarded as having made arbitrary classifications.

*State v. Mann*, 76 Wis. 469; 45 N. W. 526.

*Black v. State*, 113 Wis. 205; 89 N. W. 522.

*State v. Ferris*, 53 Ohio St. 314; 41 N. E. 579.

*Curry v. Spencer*, 61 N. H. 624; 60 Am. St. Rep. 337.

*State v. Switzler*, 143 Mo. 316; 45 S. W. 245.

*State v. Harvey*, 90 Minn. 150; 95 N. W. 764.

*State v. Bazile*, 97 Minn. 11; 106 N. W. 93.

*State v. Gormon*, 40 Minn. 232; 41 N. W. 948.

*Chambe v. Durfee*, 100 Mich. 112; 58 N. W. 661.

Statutes were held void in part and sustained as to the rest in:

*Friend v. Levy*, 70 Ohio St. 26; 80 N. E. 1036.

*Union Trust Co. v. Durfee*, 125 Mich. 487; 84 N. W. 1101.

*Re Stanford's Estate*, 54 Pac. 259; rev. 126 Cal. 112; 58 Pac. 462.

Where void in part the court refused to sustain the rest of the act in:

*Drew v. Tift*, 79 Minn. 175; 81 N. W. 839.

*State v. Harvey*, 90 Minn. 180; 95 N. W. 764.

Many State constitutions require the taxing act to express its purpose in the title. So, where an act mentioned only collateral inheritances in the title, it was held void as to illegitimate children on the ground that they could not be classed as collaterals.

*Wirringer v. Morgan*, 12 Cal. App. 26; 106 Pac. 425.

If the title does not mention real estate it was held that the tax could not be imposed upon real estate transfers under the New Jersey acts of 1892 and 1893.

*Grossman v. Hancock*, 58 N. J. L. 139; 32 A. 689.

*Von Ripper v. Heffenheimer*, 17 N. J. L. 49.

A tax on "inheritances" sufficiently covers transfers by will.

*Re White*, 42 Wash. 360; 84 Pac. 381.

As a general rule, only those adversely affected can attack the validity of a statute.

*Re Damon*, 10 Cal. App. 542; 102 Pac. 684.

*Matter of Keeney*, 194 N. Y. 281; 87 N. E. 428.

## 5. Statutes Sustained under the Fourteenth Amendment.

State inheritance tax laws have frequently been assailed before the Supreme Court of the United States on the ground that they are in violation of the Fourteenth Amendment; but they have uniformly been sustained. The doctrine, as gleaned from the authorities, is as follows:

The court distinguishes between "the measure of the tax upon the privilege, with direct taxation of the estate or thing taxed."

*Flint v. Stone-Tracy Co.*, 220 U. S. 107, 162.

"If a State may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy."

*Mager v. Grima*, 17 How. 490, 494.

In *Magoun v. Illinois Trust and Savings Bank*, 170 U. S. 283, involving the constitutionality of the graded inheritance tax law of Illinois, which taxes the particular successions according to the measure of the value of the property at the date of death, this court, in deciding that the act did not conflict in any way with the constitution of the United States, appears in its opinion fully to recognize the right of the State to measure its tax in this way, and says (p. 300) :

“The rule of equality of the Fourteenth Amendment does not require, as we have seen, exact equality of taxation. It only requires that the law imposing it shall operate on all alike under the same circumstances. The tax is not on money; it is on the right to inherit; and hence a condition of inheritance, and it may be graded according to the value of that inheritance. The condition is not arbitrary because it is determined by that value; it is not unequal in operation because it does not levy the same percentage on every dollar; and does not fail to treat all alike under like circumstances and conditions, both in the privilege conferred and in the liabilities imposed.”

In *Plummer v. Coler*, 178 U. S. 115, involving the taxation of a succession containing bonds of the United States, the court (pp. 128, 129) quoted, with approval, from the opinion of Mr. Justice Field in *Home Insurance Co. v. New York*, 134 U. S. 594; 599-600 :

“The granting of such right or privilege rests entirely in the discretion of the State, and, of course, when granted, may be accompanied with such conditions as the Legislature may deem most befitting to its interests and policy. It may require, as a condition of the grant of the franchise, and also of its continued exercise, that the corporation pay a specific sum to the State each year, or each month, or a specific portion of its gross receipts, or a sum to be ascertained in any convenient way which it may prescribe. The validity of the tax can in no way be dependent upon the

mode which the State may deem fit to adopt, in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privilege it bestows."

In *Orr v. Gilman*, 183 U. S. 248, the court said:

"The provisions of the law extend alike to all estates that descend or devolve upon the death of those who once owned them. The moneys raised by the taxation are applied to the lawful uses of the State, in which the legatees have the same interests with the other citizens. Nor is it claimed that the amount or rate of the taxation is excessive to the extent of confiscation."

In *Keeney v. New York*, 222 U. S. 525, the measure of the tax was questioned in brief for the plaintiff in error, and the court said (p. 535):

"The validity of the tax must be determined by the laws of New York. The Fourteenth Amendment does not diminish the taxing power of the State, but only requires that in its exercise the citizen must be afforded an opportunity to be heard on all questions of liability and value, and shall not, by arbitrary and discriminatory provisions, be denied equal protection."

In *Society for Savings v. Coite*, 6 Wall. 594, was upheld a tax on savings banks measured by the amount of the deposits on July 1, and although invested in United States bonds.

In *Hamilton Co. v. Massachusetts*, 6 Wall. 632, was upheld a tax on a corporation measured by the market value of such stock over the assessed value upon a certain day.

In *Delaware R. R. Tax Case*, 18 Wall. 206, 231, this court said:

"The manner in which its value shall be assessed, and the rate of taxation, however arbitrary and capricious, are mere matters of legislative discretion. It is not for us to suggest

in any case that a more equitable mode of assessment, or rate of taxation, might be adopted than the one prescribed by the Legislature of the State.”

In *Kirtland v. Hotchkiss*, 100 U. S. 491, 499, the court said:

“Whether the State of Connecticut shall measure the contribution which persons resident within its jurisdiction shall make by way of taxes, in return for the protection which it accords them, by the value of the credits, choses in action, bonds or stocks which they may own \* \* \* is a matter which concerns only the people of the State, with which the Federal Government cannot rightly interfere.”

In *Bell's Gap R. R. Co. v. Penn.*, 134 U. S. 232, a State tax upon the nominal face value of bonds instead of their actual value was held to be a valid part of the State system of taxation and that decision was approved in *Flint v. Stone Tracy Co.*, 220 U. S. 107, 160.

To a like effect are:

*Maine v. Grand Trunk Ry. Co.*, 142 U. S. 217.

*Horn Silver Mining Co. v. New York*, 143 U. S. 305, 317, 318.

*Hanley v. Kansas City Ry.*, 187 U. S. 617.

*Wisconsin & M. Ry. Co. v. Powers*, 191 U. S. 379.

*Michigan Central Ry. v. Powers*, 201 U. S. 245, 293.

*Flint v. Stone Tracy Co.*, 220 U. S. 107, 162, 163.

*Baltic Mining Co. v. Commonwealth*, 231 U. S. 68.

*Cornell Steamboat Co. v. Sohmer*, 235 U. S. 549.

## 6. Notice and a Hearing.

A statute that does not provide for it is unconstitutional.

*Matter of McPherson*, 104 N. Y. 306; 10 N. E. 685.

*Ferry v. Campbell*, 110 Ia. 290; 81 N. W. 604.

*Keeney v. New York*, 222 U. S. 525.

*State v. District Court*, 41 Mont. 357; 109 Pac. 438, 442.

Where the act provides for a review of all matters before the probate court and also for an appeal, there is a “day in court” for all who consider themselves aggrieved, and



an act which does not provide for a notice of appraisal but gives these remedies is constitutional.

*Hostetter v. State*, 26 Ohio Cir. Ct. 702.

*Union Trust Co. v. Durfee*, 125 Mich. 487; 84 N. W. 1101.

When the right of appeal is conferred by the act notice may be implied.

*Re Belcher*, 211 Pa. St. 615; 61 A. 252.

It is sufficient if the probate court has power to hear allegations under the tax, with right of appeal as in other cases.

*Trippet v. State*, 149 Cal. 521; 86 Pac. 1084.

Provision for notice by registered mail is sufficient.

*State v. District Court*, 41 Mont. 357; 109 Pac. 438.

Or by publication.

*Farkas v. Smith*, 147 Ga. 503; 94 S. E. 1016.

A defect in a statute, due to want of notice, may be cured by amendment without re-enactment.

*Ferry v. Campbell*, 110 Ia. 290; 81 N. W. 604.

While notice to the parties interested in the estate is sufficient, the statute may also require notice to the taxing officers.

*Matter of Collins*, 104 App. Div. 184; 93 Supp. 342.

## 7. Copied or Adopted Statutes.

When a statute is copied or adopted from another State the construction put upon it by courts of that State is also adopted.

*People v. Carpenter*, 264 Ill. 400; 106 N. E. 302.

*Mann v. Carter*, 74 N. H. 345; 68 A. 130.

*Neilson v. Russell*, 76 N. J. L. 655; 71 A. 286.

*Black v. State*, 113 Wis. 205; 89 N. W. 522.

*Miller v. McLaughlin*, 141 Mich. 425; 104 N. W. 777.

In view of the general similarity of the statutes and the

frequency with which they are adopted or copied this rule is of wide application and of manifest importance.

But the date of the decision cited is of great importance because the authorities cited from the parent jurisdiction in cases that arose subsequent to the adoption of the statute are advisory only and not of any binding force.

*Germania Life Ins. v. Ross Lewin*, 24 Colo. 43; 51 Pac. 488.

*Nicolett Bank v. City Bank*, 38 Minn. 85; 35 N. W. 577.

*Pratt v. Miller*, 109 Mo. 78; 18 S. W. 965.

*Stadler v. First National Bank*, 22 Mont. 190; 56 Pac. 111.

*O'Connor*, 21 R. I. 465; 44 A. 591.

*Wyoming Coal Co. v. State*, 15 Wyo. 97; 87 Pac. 377.

## 8. Practical Construction.

Where the language of the act is doubtful and a practical construction has been given it by the collection officers and has long been acquiesced in, the courts will recognize it; but only under these circumstances.

“It is immaterial what the practice of the administrative officers of the Commonwealth charged with the duty of collecting legacy and succession taxes may have been in regard to considering property within and without the Commonwealth. It is only when a statute is of doubtful import and the practice has been long continued and acquiesced in by all parties interested that it can be resorted to in aid of the construction of the statute. In the present case we discover no such ambiguity in the meaning of the statute as to justify as an aid to construction a resort to the practice of the officers charged with its execution, even if we assume that the practice had been sufficiently long continued to render it otherwise admissible.”

*Attorney-General v. Barney*, 211 Mass. 134; 97 N. E. 750.

On the other hand, the same learned court has recently given great weight to the practical construction of the statute by the officials entrusted with its enforcement.

*Tyler v. Treasurer*, 226 Mass. 306; 115 N. E. 300.

## 9. Arbitrary or Confiscatory Rates.

No transfer tax has as yet been held unconstitutional on the ground that it is exorbitant or confiscatory. Ordinarily the doctrine that the power to tax involves the power to destroy is applied, on the ground that, as there is no constitutional right of inheritance, and the living take from the dead by virtue of statute only.

*Pullen v. Com'rs*, 86 N. C. 361.

*Re McKennan*, 25 S. D. 369; 126 N. W. 611; 130 N. W. 33.

*Bretton v. Fox*, 100 Mass. 234.

*Allen v. McElroy*, 130 Ky. 111; 113 S. W. 66.

But where a probate duty has been imposed it has been suggested that it may be so large as to shock the good sense of everybody.

*State v. Mann*, 76 Wis. 469, 474; 45 N. W. 526; 46 N. W. 51.

*State v. Gorman*, 40 Minn. 232; 41 N. W. 948.

It has also been suggested that an arbitrary and confiscatory progressive tax may be unconstitutional if the graded rates are extended beyond reason.

*Knowlton v. Moore*, 178 U. S. 41; 20 S. Ct. Rep. 747.

*Blakemore & Bankroft*, p. 63.

There is, as yet, no direct authority for the proposition, and the doctrine, so frequently emphasized, that what the State gives it may take away, to the point of complete confiscation would seem to be sustained by the weight of authority. However, as the tax is on the transfer, if all is taken there is no transfer, and hence the tax becomes one on property. If the tax is so exorbitant that it amounts to a confiscation of a material portion of the property, the same reasoning might apply and the tax be condemned as a property tax.

## 10. Public Purpose.

Inheritance taxes, like all other taxes, must be imposed for a public purpose. The Missouri act of 1895 proved

obnoxious to this rule, as the proceeds of the tax were to be devoted to the support of students attending the State university. The court pointed out that it is one thing to provide for the establishment and maintenance of a system of public education and a wholly different thing to support private individuals who attend a university and public schools by public taxation; and the court concludes that the tax is levied for a purely private purpose and for that reason is in contravention of the constitution of Missouri.

*State v. Switzler*, 143 Mo. 287; 45 S. W. 245.

To the same effect is

*Luminous Medicine v. Leigenhein*, 145 Mo. 368; 47 S. W. 10.

Missouri amended the act in 1899 to meet this objection and merely devoted the receipts from the tax to a fund for "State Seminary Moneys." This statute was sustained.

*State v. Henderson*, 160 Mo. 190; 60 S. W. 109.

Under the present act this State devotes the receipts from inheritance taxes to general purposes. (See Appendix.)

Statutes were held void because the funds received from the tax were not devoted to a constitutional purpose in Wisconsin. (L. 1889, ch. 176.)

*State v. Mann*, 76 Wis. 479; 45 N. W. 526; 46 N. W. 51.

And in Michigan. (Act of 1893 wholly and Act of 1899 in part.)

*Chambee v. Durfee*, 100 Mich. 112; 58 N. W. 661.

*Union Trust Co. v. Durfee*, 125 Mich. 487; 84 N. W. 1101.

On the other hand, the fact that a statute is for a public purpose does not give it validity, if it is otherwise unconstitutional.

*Curry v. Spencer*, 61 N. H. 624; 60 Am. St. Rep. 337.

## 11. Amendment.

The same principles apply in the construction of an

amendment to a statute as prevail in the construction of the original act, and the tax is governed by the law in force at the death of the testator, although it has been amended or repealed subsequently.

*Quessart v. Canonge*, 3 La. 560.

*Matter of Moore*, 90 Hun, 562; 35 Supp. 782.

Procedure may be changed by amendment and applied to the taxation of estates where death has already occurred, but the substantial rights remain unaffected.

*Matter of Davis*, 149 N. Y. 539; 44 N. E. 185.

The action of the Legislature in amending a statute may be taken as some indication that the law did not cover the case before; the theory being that there has been an implied legislative construction.

*Matter of Enston*, 113 N. Y. 174; 21 N. E. 87.

An amendment creating exemptions will not be given a retroactive effect.

*Connell v. Crosby*, 210 Ill. 380; 71 N. E. 350.

And an amendment extending exemptions has no such effect unless the act expressly so declares.

*Provident Hospital v. People*, 198 Ill. 95; 64 N. E. 1031.

*Matter of Ryan*, 3 Supp. 136.

*Matter of Thompson*, 14 St. Rep. (N. Y.) 487.

*Matter of Wolfe*, 66 Hun, 389; 21 Supp. 515.

An amendment without repeal continues the former statute, and, as we have seen, the estates of persons dying prior to the statute are taxed under the law as it then stood.

*Re Howard*, 80 Vt. 489; 68 A. 513.

*Re Bowen* (Cal.), 94 Pac. 1055.

*Matter of Jones*, 54 Misc. 202; 105 Supp. 932.

## 12. Repeal.

The absolute repeal of an inheritance tax statute without any saving clause may leave the State with vested rights to

its accrued tax without any machinery for enforcing them. This situation occurred in California and the court said:

“The Legislature might perhaps abolish all laws for the collection of debts; this, however, would not have the effect of paying or discharging the debts or in the least impair the obligation to pay them.”

*Estate of Stanford*, 126 Cal. 112; 54 Pac. 259; 58 Pac. 462.

So, when the testator died while the tax act was in force, but no steps had been taken for collection and the repealing act saved no rights of appraisal; in an action in equity to quiet title held: “If there be a valid claim against such property the plaintiff cannot in this equitable proceeding quiet his title against such claim, even though the same be unenforceable by legal proceedings, without paying the claim.”

*Trippet v. State*, 149 Cal. 521; 86 Pac. 1084.

*Estate of Lander*, 6 Cal. App. 744; 93 Pac. 202.

#### a. SAVING CLAUSES.

There may be such a clause in another statute, as in New York, where the rights of the State were held to be saved by such a clause in the General Construction Law.

*Matter of Wright*, 214 N. Y. 714; 108 N. E. 1112.

In the above cited case the testator had died a non-resident in 1909. By the will of his mother a life interest in a fund was given to his brother and in default of issue of the brother to the testator. The brother lived until 1912 when he died without issue. The remainder then passed under the will of testator. The trust fund consisted of stock in a New York corporation. In 1911 the statute taxing intangible personal property of non-residents was repealed. It was contended that the remainder interest, being defeasible by the birth of issue to the brother, could not be ascertained on the death of the remainderman in 1909, and was not taxable until 1912 — when the life tenant died;

and, as the statute was then repealed, no tax was due and the Appellate Division so held, two justices dissenting. The Court of Appeals held that the tax accrued on the death of the remainderman in 1909, although the life tenant survived him, and, being vested in the State, was not defeated by the repealing act of 1911.

So the United States Courts hold that a saving clause preserves all taxes due prior to the repeal.

*Kertz v. Woodman*, 218 U. S. 205; 30 S. Ct. Rep. 621.

The Federal courts also hold that a saving clause in a repealing act does not preserve the tax as to remainders after life estates where the life tenant still survives.

*Clapp v. Mason*, 94 U. S. 589.

*Mason v. Sargent*, 104 U. S. 689.

*United States v. Rankin*, 8 Fed. 872.

*United States v. Hazard*, 8 Fed. 380.

*United States v. N. Y. Ins. and Trust Co.*, Fed. Cas. 15,873.

*Sturges v. U. S.*, 117 U. S. 363; 6 S. Ct. Rep. 767.

*United States v. Kelley*, 28 Fed. 845.

As we have seen this doctrine is inapplicable under statutes providing for the immediate taxation of the remainder.

*Matter of Wright*, 214 N. Y. 714; 108 N. E. 1112.

A saving clause which repealed the act "except as to estates in which the inventory has been filed" is arbitrary, unequal, and, therefore, unconstitutional.

*Friend v. Levy*, 76 Ohio St. 26; 80 N. E. 1036.

#### b. BY IMPLICATION.

Where the repealing act is in part the same as the prior statute or in similar language to the same effect it will be construed as continuing the former statute to that extent.

*Re Howard*, 80 Vt. 489; 68 A. 513.

But a statute covering the whole subject of inheritance taxation and complete in itself impliedly repeals the prior statute.

*Succession of Frigalo*, 123 La. Ann. 71; 48 So. 652.

A statute repeals by implication the repugnant provisions of another statute passed the same day but at an earlier hour.

*State v. District Court*, 41 Mont. 357; 109 Pac. 438.

*Bailey v. Drane*, 96 Tenn. 16; 33 S. W. 573.

The court said:

“It is of no consequence, in legal contemplation, that the two enactments were made at the same session of the Legislature and on the same day. The repugnance and conflict are no less on that account but are the same that they would have been if the two acts had been passed and approved at different sessions far apart. The reason and necessity for the rule recognizing repeals by implication is the same in one case as in the other. The two provisions referred to cannot coexist. They cannot stand together. This being so the latter one must prevail.”

So it is held that the passage of a general revenue act without reference to the inheritance tax repeals that tax by implication.

*Fox v. Commonwealth*, 16 Gratt. 1.

*Succession of Frigalo*, 123 La. 71; 48 So. 652.

*Bailey v. Drane*, 96 Tenn. 16; 33 S. W. 573.

*Zickler v. Union Bank and Trust Co.*, 104 Tenn. 277; 57 S. W. 341.

### C. INCIDENTAL EFFECTS.

A repeal cannot ordinarily affect the rights of parties in pending litigations; nor can it oust the United States Supreme Court of jurisdiction.

*Campbell v. California*, 200 U. S. 87; 26 S. Ct. Rep. 182.

While procedure may be altered to affect existing rights under ordinary circumstances the Supreme Court of California has held that the repeal of a statute of limitations is inoperative where twelve years had elapsed since the final decree of distribution.

*Chambers v. Gallagher* (Cal.), 171 Pac. 931.



A case illustrating some of the complications that may arise from the repeal of an inheritance tax recently came before the courts of Kansas. The statute of that State imposed the tax upon the transfer of stock in foreign corporations within the State. The act was repealed in 1913. The testator died in 1912, before the statute, and the transfer was effected in 1916, after the repeal. The court held that while the State's right to the tax survived the repeal, its right to penalize the corporation making the transfer of the stock no longer existed.

*State v. A., T. & St. Fé R.R. Co.*, 99 Kan. 831; 163 Pac. 157.

### 13. Unconstitutional Statutes.

An unconstitutional statute is void and a tax paid thereunder may be recovered.

*Matter of Brenner*, 170 N. Y. 185; 63 N. E. 133.

And no tax can be collected under the unconstitutional act even though a constitutional statute is subsequently adopted.

*Tozer v. Probate Court*, 102 Minn. 268; 113 N. W. 888.

But the same tax may be revived eliminating the unconstitutional features of the former statute and moneys already collected applied to the newly created obligation.

*State v. Kings County*, 125 N. Y. 312.

A constitutional statute is not affected by the passage of an unconstitutional act.

*Eastwood v. Russell*, 81 N. J. L. 672; 81 A. 108.

*Sawter v. Schoenthal*, 83 N. J. L. 499; 83 A. 1004.

### 14. Other General Rules.

Some State constitutions forbid reference to another act without setting forth the act referred to; but under this rule reference may be made in an inheritance tax statute

to mortality tables as these are not statutes but merely afford a method of mathematical computation.

*Union Trust Co. v. Durfee*, 125 Mich. 487; 84 N. W. 1101.

Successive laws are construed as a continuation of one another.

*Matter of Prime*, 136 N. Y. 347; 32 N. E. 1091.

*Matter of Brundage*, 31 App. Div. 348; 52 Supp. 362.

And statutes *in pari materia* are to be taken together and construed as one law.

*Pryor v. Winter*, 147 Cal. 554; 82 Pac. 202.

*Wilson v. Donaldson*, 117 Ind. 356; 20 N. E. 250.

*Russ v. Comm.*, 210 Pa. St. 544; 60 A. 169.

While acts on cognate subjects may be referred to for construction.

*People v. Koenig*, 37 Colo. 283; 85 Pac. 1129.

*Bailey v. Henry* (Tenn.), 143 S. W. 1124.

The words "this act" and "this article" apply to and include the original and each successive act.

*Matter of Embury*, 20 Misc. 75; 45 Supp. 821; aff. 154 N. Y. 746; 49 N. E. 1096.

## E.— CONFLICT OF LAWS.

### 1. Jurisdiction.

The court which undertakes to assess an inheritance tax must have jurisdiction of the parties or of the subject matter. Where the court does not acquire such jurisdiction no tax can be assessed notwithstanding the requirements of the statute.

*Oakman v. Small*, 282 Ill. 360; 118 N. E. 775.

Adjudications as to residence or domicile though essential to the jurisdiction of one State are not binding on

courts of another State and are there open to collateral attack.

*Matter of Horton*, 217 N. Y. 363; 111 N. E. 1066.

*Tilt v. Kelsey*, 207 U. S. 43; 28 S. Ct. Rep. 1.

## 2. Devolution Controlled by Foreign Laws.

While the tax is imposed by the laws of one State it may be affected by the laws of the State of domicile, as to non-residents, which regulate the devolution of their personal property. While the real estate of nonresidents without the State is never subject to tax, foreign laws as to the devolution of real estate may become important when the tax is apportioned and debts and assets not within the State are required to be considered. This was illustrated in a recent case in New Jersey.

In estimating the tax on personal property in New Jersey, belonging to a non-resident decedent, it was necessary to determine the value of the entire estate passing to her and the New Jersey Comptroller included her dower interest in lands situate in the States of New York and Minnesota. In the latter State dower has been abolished by statute and the widow's interest is fixed as one-third of the real estate, passing to her as an inheritance and taxable as such. The court held that the law of the situs controlled as to the real estate interest; that the dower interest in the New York real estate was a deduction, but that the interest in the Minnesota lands passed as an inheritance under the laws of that State and therefore was properly included in the valuation.

*Hill v. Bugbee* (N. J.), 103 A. 861.

## 3. Full Faith and Credit.

When after publication for claims a final decree is entered it is a bar to a proceeding in another State for the

collection of a transfer tax providing the court which entered such a decree had jurisdiction to probate the will.

*Tilt v. Kelsey*, 207 U. S. 43; 28 S. Ct. Rep. 1.

So it was held in Washington that when "a resident of the State of Maine died, leaving estate there and in this State, and his will was probated there, and all legacies to collateral heirs and strangers to the blood and all debts were, by order of the Probate Court in Maine paid out of the estate situated in that State, leaving the property in this State to be divided between his widow and son under the residuary clause in the will, the estate in the State of Washington is not chargeable with the increased inheritance tax upon legacies to collateral heirs and strangers to the blood at the rate of 3% and 6%; since comity requires that full faith and credit be given to the proceedings in the Probate Court in Maine, ordering those legacies to be paid out of the estate within its jurisdiction and under its control, and such order is conclusive on the courts of this State; and since the inheritance tax is to be deducted from the legacies and paid by the legatees, and the executor in this State has no opportunity to collect the same from the legatees chargeable therewith."

*In re Clark's Estate*, 37 Wash. 671; 80 Pac. 267.

#### 4. Proof of Foreign Laws.

The State of the law in a foreign jurisdiction is a question of fact to be proved like any other controverted fact.

*Kline v. Baker*, 99 Mass. 254, 255.

*Matter of Cummings*, 142 App. Div. 377; 127 Supp. 109.

This may be proved by the testimony of a duly qualified expert.

*Electric Welding Co. v. Prince*, 200 Mass. 386.

But if the evidence of the law of a foreign jurisdiction consists entirely of a written document, statute or judicial

opinion, the question of the construction and effect of the written document, statute or judicial opinion is for the court alone.

*Ely v. James*, 123 Mass. 36, 44.

*Hackett v. Potter*, 135 Mass. 349, 351.

*Shoe & Leather National Bank v. Wood*, 142 Mass. 563, 568.

*Ufford v. Spaulding*, 156 Mass. 65, 66.

*Bride v. Clark*, 161 Mass. 130, 131.

In a transfer tax proceeding a duly authenticated affidavit by an attorney of the foreign State may be received by the appraiser in the absence of objection.

*Matter of Vivanti*, 206 N. Y. 656.

*Tilt v. Kelsey*, 207 U. S. 43; 28 S. Ct. Rep. 1.

## 5. As to Sister States.

The inheritance tax statutes cannot discriminate in favor of their own residents as against residents in another State.

*Johnson's Estate*, 139 Cal. 532; 73 Pac. 424.

In this case there were two appeals, one taken by resident nieces and nephews and the other by non-resident nieces and nephews, citizens of sister States, from an order assessing inheritance tax against them, on the grounds that the statutes of 1897, page 77, contained an amendment exempting "nieces or nephews when residents of this State" and that the effect of this amendment is to relieve not only nieces and nephews, resident of this State, but also nieces and nephews resident of other States of the Union, and the Supreme Court so held.

The *Estate of Mahoney*, 133 Cal. 180; 65 Pac. 389, was overruled, and the amendment exempting nieces and nephews resident of this State held to be constitutional and not in violation of section 2 of article IV of the Constitution of the United States, nor of section 1978 of the

Revised Statutes of the United States; and that said section of the Constitution declaring that "the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States" does not strike down or limit the right of a State to confer such immunities and privileges upon its own citizens; that the clause of the Constitution is protective merely and not destructive nor even restrictive.

"It nowhere intimates that an immunity conferred upon citizens of a State, because not in terms conferred upon citizens of sister States, shall therefore be void."

"It leaves to the State perfect freedom to grant such privileges to its citizens as it may see fit, but secures to the citizens of all other States, by virtue of the constitutional enactment itself, the same rights, privileges, and immunities."

"It is a canon of construction that an act of the Legislature will yield to the constitution so far as necessary, but no further. The constitutional immunity goes only to citizens of sister States, and there is a clear distinction thus recognized between citizens of the States and citizens of the United States who are not citizens of any State, as well as citizens of alien States. By virtue of the constitution of the United States, the immunity which the Legislature by the amendment of 1897 conferred upon citizens of this State is extended to citizens of sister States, but the immunity goes no further. Citizens of territories, of the District of Columbia, and of our new possessions, as well as aliens, are not exempted, and their property is thus liable for the tax."

## **6. As against Aliens Protected by Treaties.**

Several of the States have undertaken to discriminate in the rate of tax imposed upon transfers to and from aliens. If the treaty with the foreign power protects such

aliens from discrimination, the State, obviously, has no right to make such discrimination.

*Adams v. Akerlund*, 168 Ill. 632; 48 N. E. 454.

*Matter of Stixrud*, 58 Wash. 339; 109 Pac. 343.

*McKeown v. Brown*, 167 Ia. 489; 149 N. W. 593.

*Brown v. Daly*, 172 Ia. 379; 154 N. W. 602.

But the treaty cannot impair the right of the State to regulate transfers from its own citizens to foreign beneficiaries.

In *Peterson v. Iowa*, 245 U. S. 170; 38 Sup. Ct. Rep. 109; affirming *Matter of Anderson*, 166 Ia. 617, the United States Supreme Court said:

“In other words, the right of the citizens of each of the contracting nations reciprocally to own, dispose or transmit their property situate in another country free from provisions or restrictions discriminating because of alienages, in the largest possible sense, that which is protected by the treaty, and, conversely, this being true, it follows also that the treaty did not protect the right of the citizens of either country to acquire by transfer or inheritance property situated in the other belonging to its own citizens free from the restraints imposed by the law of such country on its own citizens even although such restraints would not have been applicable in case the property had been disposed of or transmitted to a citizen.”

The “most favored nation” clause of such treaties has been held to apply only to commerce and navigation and not to inheritance taxes.

*Peterson v. Iowa*, 245 U. S. 170; 38 S. Ct. Rep. 109.

*Duus v. Brown*, 245 U. S. 176; 38 S. Ct. Rep. 111; aff. 168 Ia. 511.

Upon similar reasoning the Supreme Court of North Dakota has arrived at a similar conclusion. Under the statute of that State a tax of 25% is levied upon transfers to non-resident aliens in case of collaterals. In the particular case before the court the alien resided in the United

States and not in Norway, his native country. It was held that the treaty with Norway did not protect him. Under the provisions of article 6 of the treaty of 1783, revived by article 17 of the treaty of 1827, residents in each country are entitled to carry their property home without tax or molestation. The court properly distinguishes between the right to carry property out of the State when it belongs to a devisee and a tax upon the transfer to him at death of the owner imposed before the property becomes his.

*Moody v. Hagen*, 36 N. D. 471; 162 N. W. 604.

On the other hand, while aliens cannot be discriminated against in violation of a treaty they are no better off than citizens and must pay succession taxes at the same rate.

*Matter of Strobel*, 39 Supp. 169; aff. 5 App. Div. 621.

But a treaty negotiated subsequent to the statute cannot affect the State's right to its tax.

*Prevost v. Greneaux*, 60 U. S. 1; 19 How. 1.

*Succession of Schaffer*, 13 La. Ann. 113.

The following treaties have been construed in inheritance tax cases where the Legislature has attempted to impose a heavier tax upon aliens than upon citizens:

Bavaria — 1845.

*Succession of Crusius*, 19 La. Ann. 369.

Denmark — 1820-1857.

*Peterson v. Iowa*, 245 U. S. 170; 38 S. Ct. Rep. 109.

France — 1853.

*Succession of Rabasse*, 49 La. Ann. 1405; 22 So. 767, 772.

Italy — 1871.

*Succession of Rixner*, 18 La. Ann. 552; 19 So. 597.

Norway and Sweden — 1827.

*Moody v. Hagen*, 36 N. D. 471; 162 N. W. 704.

*Matter of Stixrud*, 48 Wash. 339; 109 Pac. 343.



**Spain — 1795.**

*Succession of Sala*, 50 La. Ann. 1009; 24 So. 674.

**Sweden — 1783-1816-1827.**

*Duus v. Brown*, 245 U. S. 176; 38 S. Ct. Rep. 111.

*Adams v. Akerlund*, 168 Ill. 632; 48 N. E. 454.

**Wurtemberg — 1844.**

*Matter of Stroebel*, 5 App. Div. 621; 39 Supp. 169.

*Frederickson v. State*, 23 How. (U. S.) 445.

**7. Reciprocal Provisions.**

Minnesota in 1911 exempted non-resident transfers when the laws of the State of domicile “exempt or do not impose a tax upon transfers of personal property of residents of Minnesota having its situs in such State.” A State which imposes such a tax upon the personal property of collaterals and strangers only does not come within the provision. This provision has since been repealed.

*Graff v. Probate Court*, 128 Minn. 371; 150 N. W. 1094.

Under “reciprocal” statute of Massachusetts property of a resident of New York in that State pays only so much tax as is in excess of the tax imposed in New York.

*Bliss v. Bliss*, 221 Mass. 201; 109 N. E. 148.

And under a similar provision in the Vermont statute it was held that only the amount of the tax actually paid in another State, less discount, could be deducted.

*Re Meadon*, 81 Vt. 490; 70 A. 579.

## PART II—THE TRANSFER

---

	PAGE
<b>A. Transfers by Will and Intestacy.....</b>	84
1. Testamentary Provisions which may Affect the Tax.....	84
a. What a Testator Cannot Do.....	85
b. What He Can Do.....	86
2. Transfers Pursuant to Agreements to Make a Will.....	87
a. Where the Agreement is Violated.....	87
b. Where the Agreement is Performed.....	89
3. Compromise Agreement between Heirs and Devisees.....	93
4. Payment of Debt by Will.....	97
5. As Affected by Statute.....	99
6. Transfers by Intestate Law.....	100
a. As to Real Estate.....	100
b. As to Personal Property.....	101
<b>B. Gifts. ....</b>	103
1. Valid and Invalid. ....	104
a. Burden of Proof is on Donee.....	104
b. There Must be a Present Intent to Give.....	105
c. There Must be Delivery of the Thing Given.....	106
d. Delivery to an Agent.....	106
(1) To Agent of Donor.....	107
(2) To Agent of Donee.....	108
e. Symbolical Delivery. ....	109
f. Re-Delivery by Donee to Donor.....	109
g. Power of Revocation. ....	111
h. Stock Transfer Stamps.....	113
i. Consideration. . . . .	114
2. Gifts Causa Mortis. ....	114
3. Gifts in Contemplation of Death.....	115
a. Nature of the Contemplation.....	115
b. Advanced Age alone Insufficient.....	119
c. Statutory Time Limit. ....	123
d. Tax Accrues at Date of Gift.....	123
4. Gifts take Effect at or after Death.....	124
a. Trust Deed Reserving Income to Donor.....	125
b. Where Part of the Income is Reserved.....	130
c. Where the Life Use is Waived.....	130
d. Reservation of Power to Revoke.....	131
<b>C. Consideration as Affecting Testamentary Transfers.....</b>	136
1. Where the Transaction is Completed Inter Vivos.....	138

	PAGE
2. Where the Contract is Executory.....	141
3. The Consideration must be Adequate.....	151
4. Burden of Proof. ....	156
D. Life Insurance. ....	157
1. Nature of the Contract.....	158
2. No Title to Fund in Assured.....	158
3. The Insurance Company Pays the Taxes.....	159
a. State Taxes. ....	159
b. Federal Taxes. ....	160
4. Proceeds Taxable as Inheritance when Payable to Estate.....	162
5. Where Payable to Beneficiary not Taxable.....	165
6. Construction of Policies. ....	171
7. Statutory Provisions. ....	173
E. Power of Appointment. ....	173
1. The Common Law Rule. ....	173
2. The Statutory Rule.....	175
3. The New York Rule. ....	176
4. The Massachusetts Rule. ....	176
5. Development of the New York Rule.....	179
6. Construction of Wills.....	180
7. Where Power is Exercised by Deed.....	181
8. Questions of Residence. ....	183
F. Common Law Transfers. ....	185
1. Dower. . . . .	185
2. Tenancy by the Curtesy.....	189
3. Marital Right. ....	189
4. Tenancies by the Entirety.....	190
a. Not Taxable as an Inheritance.....	190
b. Nature of the Estate.....	191
c. How Created. ....	192
d. How Terminated. ....	194
e. Effect of Taxing Statute.....	194
5. Joint Tenancy. ....	197
a. Not Generally Taxable. ....	197
b. Where Succession is Specifically Taxed.....	200
c. Construction of the Statute.....	201
6. Escheat. . . . .	205
G. Civil Law Transfers. ....	207
1. Taxable. . . . .	207
2. Not Taxable. ....	207
3. Gains Acquired in Foreign Country Exempt.....	208
4. Gains Acquired in this Country Taxable.....	208

## PART II—THE TRANSFER

---

### A.—TRANSFERS BY WILL AND INTESTACY.

Bearing in mind the cardinal doctrine that it is the transfer of property upon which the tax is levied and not upon the property, we now come to examine the various forms of transfer that are subject to inheritance taxation.

The earlier statutes concerned themselves only with transfers by will or pursuant to intestate law. There soon appeared so many loopholes through which the tax could be avoided that there has been a constant effort on the part of the Legislatures to reach transfers testamentary in their character between the living, such as gifts in contemplation of death, agreements to take effect at death, deeds with the reservation of a life use, joint estates and even co-partnership agreements.

Strictly speaking, an “inheritance” would be confined to successions under the intestate laws, but transfers by will, under the language of the statutes, are held to be included within the term “inheritance.”

*Re White*, 42 Wash. 360; 34 Pac. 831.

*Knox v. Emerson*, 123 Tenn. 409; 131 S. W. 972.

#### 1. Testamentary Provisions which may Affect the Tax.

The provisions of the will necessarily affect the transfer under it, and some of the most complex problems of inheritance taxation arise from the construction of wills. Most of the States have statutes prohibiting the suspension of the power of alienation of real estate and the absolute ownership of personal property and other restrictions upon the power of testators in the creation of future and artificial estates, but this subject is beyond the scope of this work.

### a. WHAT A TESTATOR CANNOT DO.

Testators, or the attorneys who draw their wills, have tried various devices to defeat or minimize inheritance taxes. One of the most common is to devise large sums to executors, who are also near relatives, in lieu of commissions. Nearly all the statutes provide that such bequests are taxable where they are in excess of ordinary commissions.

*People v. Bauder*, 271 Ill. 446; 111 N. E. 598.

Neither can a testator effectively direct that no inventory of his estate be made or filed with the court, for he cannot thus nullify the statute.

*Matter of Morris*, 138 N. C. 259; 50 S. E. 682.

He cannot change real estate into personal property by the direction for its sale (except in Pennsylvania).

*Connell v. Crosby*, 210 Ill. 380; 71 N. E. 350.

*McCurdy v. McCurdy*, 197 Mass. 248; 83 N. E. 881.

*Matter of Mills*, 86 App. Div. 555; 67 Supp. 956; 84 Supp. 1135; aff. 177 N. Y. 562; 69 N. E. 1127.

He cannot reduce the amount of the tax by providing in his will that it shall be paid as an expense of administration. If he so provides, the amount of the tax is not a deduction from the rest of the estate. That is to say, if the tax amounted to \$10,000, and was payable out of a residuary estate of \$100,000, the taxable residuary estate would be valued at \$100,000 and not at \$90,000.

*Matter of Swift*, 137 N. Y. 77; 32 N. E. 1096.

On this subject the court said, in the Swift case:

“Another question, which I shall merely advert to in conclusion, arises upon a ruling of the Surrogate with respect to appraisement, in connection with a clause of the will directing that the amount of the tax upon the legacies and devises should be paid as an expense of administration. The appraiser, in ascertaining the value of the residuary

estate for the purpose of taxation, deducted the amount of the tax to be assessed on prior legacies. The Surrogate overruled him in this, and held that there should be no deduction from the value of the residuary estate of the amount of the tax to be assessed, either upon prior legacies, or upon its value. He held that the legacies taxable should be reported, irrespective of the provision of the will; and that a mode of payment of the succession tax prescribed by will is something with which the statute is not concerned. I am satisfied with his reasoning and can add nothing to its force. Manifestly, under the law that which is to be reported by the appraiser for the purpose of the tax is the value of the interest passing to the legatee under the will, without any deduction for any purpose, or under any testamentary direction."

b. WHAT HE CAN DO.

There are a number of things that a testator can do, however, to lessen or avoid the tax by the provisions of his will.

The most obvious is to cut up his estate into numerous legacies so small that they will be within the exemption, or pay the smallest percentage under the graded rates.

He can also leave his property to an exempt charitable corporation which might be induced to make a "settlement" with his heirs. Of course in practice such a thing would never be done, but the possibility remains.

*Matter of Murray*, 92 Misc. 100; 155 Supp. 185.

He may direct in his will from what fund the tax is to be paid.

*Matter of Smith*, 80 Misc. 140; 141 Supp. 798.

The effect of a provision that the tax be paid out of the residuary estate is to increase the value of the specific legacies by the amount of the tax, the executor paying the tax on

behalf of the legatee out of the residuary, instead of out of the legacy.

*Matter of Gihon*, 169 N. Y. 443; 62 N. E. 561.

This presents an anomaly in the adjustment of the tax. For example, if the specific legacy amounted to \$100,000, taxable at 5%, the tax would be \$5,000. On the theory of the *Gihon* case the legacy would be substantially \$105,000. If the residuary went to a beneficiary in the 1% class, the \$5,000 paid on behalf of the legatee should be taxed at 5% instead of 1%, but it never has been so taxed in any case called to the attention of the authors.

## 2. Transfers Pursuant to Agreement to Make a Will.

### a. WHERE THE AGREEMENT IS VIOLATED.

It frequently happens that men agree by valid contract upon consideration to make a will in favor of the beneficiary who performs the services or gives other consideration. It also occurs that the agreement is violated. In such a case the court enforces the agreement and deems the transfer to take place as under the will which should have been made.

This is well illustrated in *Matter of Kidd*, 188 N. Y. 274; 80 N. E. 924. In this case decedent, some years prior to his death, made an ante-nuptial agreement with the woman whom he subsequently married whereby, in consideration of their marriage, and the promise of the woman to turn over to him the sum of \$40,000, to be used in his business, he agreed that he would adopt the daughter of the woman, give her his name and make her his heir. He left a will disposing of an estate of more than \$800,000, but did not leave it to the daughter, as he had agreed. The daughter brought an action setting forth these facts and obtained a judgment which declared that the contract was a valid contract, entitling the plaintiff to all the property, real and personal, of which the deceased died seized or possessed,

and directing the executors to execute and deliver to her all the necessary releases and conveyances of said property. Under these circumstances the court held that the transfer was pursuant to will and that the beneficiary of the agreement thus enforced must pay the transfer tax.

The theory upon which such agreements are sustained was stated by Judge Werner in *Phalen v. U. S. Trust Co.*, 186 N. Y. 178; 78 N. E. 943, as follows:

“The principles upon which such agreements are sustained was stated by Lord Camden as early as the year 1769 in *Durfour v. Ferraro* (Hargrave’s Jurid. Arg., 304), and it was not then new \* \* \* ‘Though a will is always revocable and the last must always be the testator’s will, yet a man may so bind his assets by agreement that his will shall be a trustee for the performance of the agreement. A covenant to leave so much to his wife or daughter, etc. \* \* \* These cases are common and there is no difference between promising to make a will in such a form and making his will with a promise not to revoke. This court does not set aside the will but makes the devisee, heir or executor, trustee to perform the contract.’ ”

A will is admissible to probate notwithstanding it indicates some contract obligation of binding force on the testator’s part. For, at all events, one may by his will appoint the executor to administer the estate; and, more than this, the probate of a will as to one’s property merely concludes that the will is valid to pass any estate which the testator had power to devise or bequeath, and not that there was power to devise or bequeath as the will seeks to direct. Controversies of the latter sort are, on the other hand, to be settled by proper and separate proceedings in law or equity.

Schouler on Wills, Executors and Administrators, 5th ed., § 452-a.

But where a man made a deed to his wife on her promise



to devise the property to him, and she failed to do so, his agreement was enforced by suit. Held not taxable.

*Nelson v. Schoonover*, 89 Kan. 779; 132 Pac. 1183.

This case would seem against the weight of authority.

#### b. WHERE THE AGREEMENT IS PERFORMED.

Transfers by will, even where made upon consideration of a prior agreement, have almost invariably been held taxable. This is upon the theory that the tax is on the transfer and that the motive of the transfer cannot affect its character, even though there is an election. If the beneficiary takes under the will he cannot avoid that tax on the theory that he might have elected to take under the contract and present his claim as a debt against the estate.

*State v. Gerhard*, 99 Kan. 462; 162 Pac. 1149.

This principle was well illustrated and expounded in a recent case in Massachusetts (*Hill v. Treasurer*, 227 Mass. 331; 116 N. E. 509). In this case, by an ante-nuptial agreement, the man provided that the woman whom he was about to marry, if she should become his wife, should receive, at the time of his death, \$250,000, "for her own property outright, with interest from the day of death as a debt against my estate." By his will the testator affirmed the agreement and provided: "It is my wish that the sum of \$250,000 be paid to her within six months of the date of my decease and when such payment is made instead of taking cash my said wife, if she so elects, may take from out of my estate bonds, stocks, or other evidences of value to said amount of \$250,000." The widow elected to take the stock and bonds instead of cash under the will. In a proceeding to impose the inheritance tax the court said: "The transfer and acceptance of these securities by Mrs. Hill was, in fact and in law, a legacy in payment of a debt. The inheritance tax law of the Commonwealth applies to all cases whether

property or an interest therein passes by will. It is not confined to cases where the property, or an interest therein, passes as a gratuity. It includes cases where the property, or an interest therein, passes by will in the performance of an obligation resting upon the testator to devise, or bequeath, the property in question or where, as in the case at bar, a legacy is given in payment of a debt," citing:

*Matter of Gould*, 156 N. Y. 423; 51 N. E. 287.

*Carter v. Craig*, 77 N. H. 200; 90 A. 598.

*State v. Molier*, 96 Kan. 514; 152 Pac. 771.

*Matter of Kidd*, 88 N. Y. 274; 80 N. E. 924.

*Turner v. Martin*, 7 deG. N. & G. 429.

A similar situation arose in the Massachusetts probate court for Middlesex county, July, 1911, in the *Matter of Perry*. Here the testator made an agreement to leave property by will in consideration of care and support to be given him for the rest of his life, and he made a will carrying out the agreement. The court held that this was not a "*bona fide* purchase for full consideration for money or money's worth made \* \* \* to take effect \* \* \* after the death of the grantor." The court found that the devisee took no title in her lifetime, but that the words quoted applied only to a deed and not to a will. As the will was made and allowed the devisee was bound by an effective performance of the agreement and took compensation under the will, and as an incident of the transfer of the estate to her she was held liable to the tax. The court suggested that for actual disbursements incurred in the service the devisee might well be a creditor of the estate.

So, where a husband bought real estate and conveyed the same to his wife by deed, upon her promise to devise the same to him by will, which she did, held,—taxable.

*Ransom v. United States*, 70 Fed. Cas. No. 11,574.

Where a man contracted with his housekeeper to make a will in her favor to pay her for her services, and the amount

thus contracted to be devised was to increase by lapse of time, and the contract was thus not the mere satisfaction of a debt, it was held that the contract was subject to the inheritance tax as fixed by the statute at the date thereof.

*Clark v. Treasurer*, 226 Mass. 301; 115 N. E. 416.

In the *Matter of Alfred G. Vanderbilt*, 184 App. Div. 661; aff. 226 N. Y. (mem.), there was an ante-nuptial agreement for the payment of \$2,000,000 at death and a provision in the will effectuating the agreement. It did not clearly appear that the widow took pursuant to the will rather than the agreement, and the court held the transfer a debt of the estate and not taxable. From an expression in the opinion of Judge Page it might seem that the court was inclined to the view that a transfer by will upon consideration was not within the perview of the statute, but it is believed that the New York courts will not depart from the rule in the Kidd case, *supra*.

A more difficult problem arises under mutual wills. These, in the absence of contract, are revocable without notice.

*Edson v. Parsons*, 85 Hun, 263; 32 Supp. 1036; aff. 155 N. Y. 555; 50 N. E. 265.

*Middleworth v. Ordway*, 191 N. Y. 404; 84 N. E. 291.

But where there is a contract and that contract provides that the survivor shall have certain rights in the estate of the deceased, and the agreement is upon good consideration, the question has arisen whether the transfers under the mutual wills are taxable. The authorities hold that they are.

In the *Matter of Cory*, 177 App. Div. 781; 164 Supp. 956; aff. 221 N. Y. 612, two brothers agreed that the survivor might buy certain securities from the estate of the deceased brother at a fixed price and the surviving brother claimed that the assets he thus acquired should be appraised at the price fixed by the will. The court said:

“The result would have been, and in fact was, so far as the State is concerned, that by the contract and will read together John M. Cory received in possession and enjoyment after his brother’s death stock worth upwards of \$100,000. In other words, for the purpose of distribution the testator might put any arbitrary value he chose upon the stock, but for the purpose of assessment for taxation under the Transfer Tax Law, the stock is to be appraised at its real value, and it is unimportant under the statute that the sale of the stock to John M. Cory at the arbitrary valuation was provided for by an ante-mortem bargain or contract, since the transfer by virtue of that contract was clearly ‘intended to take effect in possession or enjoyment at or after’ the brother’s death. To apply any other rule to a case like the present would open the door to unlimited devices to avoid the payment of transfer taxes. My conclusion is that the stock in question should be appraised for the purpose of the transfer tax at its fair market value at the time of the testator’s death.”

In *Matter of Burgheimer*, 91 Misc. 468; 154 Supp. 943, decedent had orally agreed with his partner that on the death of either the survivor should take the decedent’s interest in the good will of the firm; and that each should make a will containing this provision. Surrogate Fowler held that the good will was taxable notwithstanding, and remitted the report for determination of the value thereof. He says:

“An agreement between parties as to the devolution of the good will of their business on the death of either does not prove that there was no good will. Nor does it perhaps *bind the State not a party to the undertaking.* \* \* \* Undoubtedly the decedent died owning an interest in the good will and firm name of the co-partners. Consequently the good will formed a part of his estate as an asset. I fail to find a precedent by which the testator through the

operation of his last will and testament would be able to reduce to nothingness a substantial asset of his estate and thus escape its proper taxation. I have examined the authorities submitted by the respondent and do not think that they determine a legal finding different from that which I have expressed."

### 3. Compromise Agreements between Heirs and Devisees.

The weight of authority holds that when the will is admitted to probate the tax must be paid under its provisions without reference to any subsequent arrangement among the heirs or devisees, as they take by contract and not under the will nor from the testator.

*Greenwood v. Holbrook*, 111 N. Y. 465; 18 N. E. 711.

In *Matter of Cook*, 187 N. Y. 253; 79 N. E. 991, it was held that legacies to nephews and nieces, assigned by them to testator's widow, for valuable consideration, and in settlement of a contest of the will instituted by her, pass to the widow, not under the will, but by virtue of the assignment to her, and she takes as assignee and not as legatee, and the legacies were therefore taxable at 5%, not 1%.

As we have already seen, had the nephews and nieces renounced their legacies instead of assigning them, and the legacies had then passed to the widow under a residuary clause of the will, the result would have been the reverse.

*Matter of Wolfe*, 89 App. Div. 349; 85 Supp. 949; aff. 179 N. Y. 599; 72 N. E. 1152.

*Estate of Stone*, 132 Ia. 136; 109 N. W. 455.

So, where heirs contested a will which left a large estate to exempt charitable corporations who paid the heirs one-third to withdraw contest, the bequests were exempted and the heirs took nothing under the will, it being no concern of the State what they received under the compromise agreement.

*Matter of Murray*, 92 Misc. 100; 155 Supp. 185.

An heir threatened contest because disinherited and a sum was paid her in compromise. It was held taxable against the residuary legatees and not against the disinherited heir. The court said: "The whole of the residuary estate vested at the instant of his death in the residuary legatees. The inheritance tax was then due and payable. The beneficial interest then passed to the legatees and their succession gave rise to the tax. Subsequent events did not affect it. (*In re Cook*, 187 N. Y. 253; 79 N. E. 991.) The contrary view is held by the Supreme Court of Pennsylvania, but we cannot assent to the reasoning or the conclusion in those cases."

*Estate of Graves*, 242 Ill. 212; 89 N. E. 978.

Beneficiaries under an earlier will permitted a later will to be probated under a compromise agreement. Held, that upon the probate of the will the entire estate vested in the devisees, and they, and not the contestants, were subject to tax.

*Estate of Wells*, 142 Ia. 255; 120 N. W. 713.

A testator devised entire estate to widow. Collateral heirs contested but withdrew contest on payment to them of one-half of the property by the widow. Held, that no tax was due from the collateral heirs.

*English v. Crenshaw*, 120 Tenn. 531; 110 S. W. 210.

Heirs agreed to convey a portion of devised real estate in settlement of a claim of one of them. Held, that the tax must be paid on the entire realty to release the lien.

*Estate of Sanford*, 90 Neb. 410; 133 N. W. 870.

Where heirs under a compromise agreement changed the distribution as made by the will the tax should be assessed as if the property passed as directed by the will and not as it did under the agreement.

*Batt v. Treasurer*, 209 Mass. 459; 95 N. E. 854.

In the Batt case the court said:

“It is important that in the assessment of this tax there should be a plain, simple rule. The property upon which the tax is to be assessed is that which passes by will or by the laws regulating intestate succession. When there is a will, whether or not it disposes of the whole estate of the testator, whatever does pass by it passes to the legatees therein named, and by force of the will passes to no other person.

“In view of the nature and office of the compromise statute, and of the language of the tax statute, the most reasonable interpretation of the phrase ‘which shall pass by will’ in the tax statute is that it describes only property that passes by the terms of the will as written and not as changed by any agreement for compromise made within or without the statute. Any other interpretation would make the amount to be assessed hinge on the manner in which the agreement was to be carried out. In the case before us there can be no doubt, if the will had been admitted to probate without a record of the agreement, the tax would have been assessed in accordance with the terms of the will, although the agreement as to the division of the estate would have been perfectly valid. For reasons hereinbefore stated the amount of the tax is not changed by the fact that the agreement was approved by the court and made a part of the decree.”

Where a testator by his will leaves one-half of his property to his wife and the other half to his sons and daughters, and the estate is all community property, and there is nothing in the will to indicate an intention to make the testamentary gift to the widow stand in lieu of her community interest, she takes three-fourths of the entire community property and is chargeable with inheritance tax on such three-fourths, notwithstanding the filing of a “waiver” of her rights to anything over one-half of the

estate. The right of the State to an inheritance tax, based upon three-fourths of the estate, vested upon the death of the testator, and could not be affected by any subsequent arrangement that might be made by the heirs.

*Estate of Rossi*, 49 Cal. Dec. 60.

The amount passing to legatees under a will and not what they actually receive under a compromise agreement is to be assessed as the "fair market value" of their legacy.

*Matter of Stockwell*, 158 Supp. 320.

So, it was recently held that an amount paid from legacies to secure the withdrawal of a contest of the will was not allowable as a deduction.

*Matter of Reed*, 98 Misc. 102; 162 Supp. 412.

Where there was a void clause in a will creating a trust the heirs agreed to cure the defect, the property went to the trustees; but the court held that there was in fact an intestacy as to the trust funds and that the tax must be assessed against the beneficiaries who would take under intestacy and not as the property subsequently passed under the agreement.

*Matter of Leeds*, N. Y. L. J., June 2, 1914.

Money paid under an agreement to compromise an adverse claim to the estate is taxable against the heirs.

*Matter of Edwards*, 85 Hun, 436; 32 Supp. 901; aff. 146 N. Y. 380; 41 N. E. 89.

Where the testator died in 1869 leaving a will devising property to a certain school, and if the Legislature should pass any act which would defeat the carrying out of this legacy, then he bequeathed the fund to his illegitimate children, the illegitimate children claimed that the clause creating the fund was illegal under Virginia statutes and that they were therefore entitled, and a settlement was made with them for \$300,000. The court held that the estate



taken by the illegitimate children was an executory devise and was void for remoteness; that as they were not entitled to any legacy, the \$300,000 paid them was not paid as a legacy and was not liable to taxation; that it was not paid as a distributive share, as, being illegitimate children, they would be entitled to no interest in the estate if he died intestate.

*Page v. Rives*, Fed. Cas. No. 10,666; 1 Hughes, 297.

The only States which hold a contrary view and permit subsequent arrangements among the heirs to affect the tax are Pennsylvania and Colorado.

*Pepper's Estate*, 159 Pa. St. 508; 28 A. 353.

*Hawley's Estate*, 214 Pa. St. 525; 63 A. 1021.

*People v. Rice*, 40 Colo. 508; 91 Pac. 33.

But in these States the tax is levied upon the persons who actually receive the property under the agreement. And even the amount paid to their counsel as fees under the agreement is held to be taxable.

*Re Taber*, 257 Pa. St. 205; 101 A. 311.

In Pennsylvania the allowance or compromise of the claims of third persons simply reduces the estate afterwards passing to volunteers with the same effect as if the reduction had been caused by the payment of debts, or as if the payment or surrender had been the result of a suit terminating in favor of the claimant.

*Re Kerr*, 159 Pa. St. 512; 28 A. 354.

#### 4. Payment of Debt by Will.

This must not be confused with the mere direction in a will by a testator to an executor to pay a debt, or generally to pay all lawful debts. A creditor cannot be transformed into a legatee by a direction in his debtor's will that he be paid the debt. Such a direction neither makes a transfer nor creates a succession.

*Matter of Burhans*, 100 Misc. 646; 166 Supp. 1027.

There must be a distinct bequest to the creditor and such bequest must clearly be intended as a satisfaction of the debt or in lieu of its payment. Under such circumstances the payment of a debt by will would seem to involve substantially the same principle as where the will is made pursuant to contract. The debtor has the same right of election. He may renounce the legacy and present his claim against the estate as a debt, in which case no tax would accrue. On the other hand, the claim may be rejected by the executor or its amount disputed, and under most statutes the legacy may be paid more promptly than the debt. There may be distinct advantages in accepting the legacy; but if it is accepted there is a transfer under the will and the money is paid as a legacy and not as a debt; it is therefore held subject to the tax imposed upon such a transfer. This doctrine seems amply supported by authority.

Where the testator recited that his son had rendered him valuable services and devised \$5,000,000 in payment of the same and all subsequent services until his death, held a taxable transfer. The court said: "It matters not what the motive of a transfer by will may be, whether to pay a debt, discharge some moral obligation, or to benefit a relative for whom the testator entertains a strong affection; if the devise or bequest be accepted by the beneficiary, the transfer is made by will, and the State, by the statute in question, makes a tax to impinge upon that performance."

*Matter of Gould*, 156 N. Y. 423; 51 N. E. 287.

So, where a niece agreed to live with her uncle and care for him as long as he should live and he agreed to leave her all his property by will, and did so, the property passed to her by will and was taxable in spite of the contract, though fully executed on her part.

*State v. Mollier*, 96 Kan. 514; 152 Pac. 771.

Where bonds of a corporation were canceled by will it

was held a taxable transfer to the corporation. The court said: "The debenture bonds in question were the property of the testator. When he bequeathed them to the asylum the property passed from him to it. It might cancel the bonds, and to relieve itself of the obligation they evidenced, or it might, probably, transfer them to anyone who would be willing to pay their value.

*Re Rothschild*, 71 N. J. Eq. 210; 63 A. 615; aff. 72 N. J. Eq. 425; 65 A. 1118.

When notes of legatees are forgiven by will and are shown to be valueless no tax is assessable.

*Matter of Daly*, 100 App. Div. 373; 91 Supp. 858; aff. 182 N. Y. 524; 74 N. E. 1116.

Payment of a debt by the exercise of a power of appointment is taxable if the creditors accept it.

*Matter of Rogers*, 71 App. Div. 461; 75 Supp. 835; aff. 172 N. Y. 617; 64 N. E. 1125.

*Matter of Slosson*, 87 Misc. 517; 149 Supp. 797; affirmed as to this point 216 N. Y. 79; 110 N. E. 166.

And where the testator agreed to leave all the property to the beneficiary in return for support for life, and did so, the devise was held taxable.

*Carter v. Craig*, 77 N. H. 200; 90 A. 598.

## 5. As Affected by Statute.

The New York statute regulating transfers by will is Article 2 of the Decedent's Estate Law, Chapter 18, L. 1909, sections 10 to 47, and is given in full, with index, in the Appendix.

Some of the States require three witnesses to pass real estate; and questions may arise in tax proceedings as to the validity of trusts. Generally the courts seek to avoid constructions which will create an intestacy, and the pre-

sumption is that the testator intended to dispose of his entire estate.

*Dreyer v. Reisman*, 136 App. Div. 796.

## 6. Transfers by Intestate Law.

In New York these are regulated by Article 3 of the Decedent Estate Law, and by statute in all the states.

“The term ‘intestate laws’ is intended to cover the statute of descent which relates to the descent of real estate, and the statute of distribution, which provides for the distribution of the surplus of the personal property of decedent, after the payment of his debts and legacies if he left a will, and after setting apart to the widow and minor children the exemptions specified in section 2713.”

*Matter of Page*, 39 Misc. 220; 79 Supp. 382.

### a. AS TO REAL ESTATE.

A child *en ventre sa mere* is in being for purposes of descent.

*Rockwell v. Gregory*, 4 Hun, 606.

A will is not revoked by the advent of an after-born child of testator, but the child as heir is put to his or her special statutory action under this section and only the Supreme Court may determine whether or not the action will lie.

*Matter of Sauer*, 89 Misc. 105; 151 Supp. 465.

Lineal descendants include an illegitimate child whose parents subsequently married.

*Miller v. Miller*, 91 N. Y. 315.

Where brothers and sisters have a reversionary interest it vests at the death of the intestate and is not affected by the intervening life estate of their mother.

*Barber v. Brundage*, 50 App. Div. 123; 63 Supp. 347; aff. 169 N. Y. 368.

In the absence of statute great uncles inherit to the exclusion of great aunts.

*Hunt v. Kingston*, 3 Misc. 309; 23 Supp. 352.

Where intestate conveyed to his mother property he had received by descent from his father, and she afterwards willed it to him, it was held that the land was received on the part of the mother and went to those of her blood.

*Adams v. Anderson*, 23 Misc. 705; 53 Supp. 141.

Real estate received from the mother goes to cousins on the maternal side to the exclusion of collaterals on the side of the father.

*Matter of McMillan*, 126 App. Div. 155; 110 Supp. 622.

But where the real estate did not come from either father or mother the collaterals on both sides are entitled to share.

*Matter of Peck*, 53 Misc. 535; 109 Supp. 1083.

#### b. AS TO PERSONAL PROPERTY.

Lineal consanguinity is reckoned by counting each step, up or down, from the deceased; collateral consanguinity by counting the steps from the intestate to the common ancestor, then down to the collateral beneficiary.

*Matter of Marsh*, 5 Misc. 428; 26 Supp. 718.

Three nephews and the child of a deceased nephew share equally, each one-fourth.

*Matter of Prote*, 54 Misc. 495; 104 Supp. 301.

In all such cases the nephews and nieces and the children of deceased nephews and nieces take per stirpes.

*Matter of Fleming*, 48 Misc. 589; 98 Supp. 306.

*Matter of Dunning*, 48 Misc. 482; 96 Supp. 1110.

And generally, where there are unequal degrees, the beneficiaries take per stirpes.

*Dwight v. Gibb*, 150 App. Div. 573; 135 Supp. 431.

Brothers and sisters and their lineal descendants to the most remote degree are preferred to other kindred not in closer blood relationship; so held, preferring great grand-nieces over first cousins.

*Matter of Butterfield*, 161 App. Div. 506; 146 Supp. 671; aff. 211 N. Y. 395.

Prior to 1898 subdivision 12 of section 2732 of the N. Y. Code, now section 98 of the N. Y. Decedent's Estate Law, read:

“No representation shall be admitted among collaterals after brothers' and sisters' children.”

In 1898 said subdivision was amended to read: “Representation shall be admitted among collaterals in the same manner as allowed by law in reference to real estate.”

Where an intestate is survived by nephews and nieces and by grandnephews who are children of a deceased nephew and niece, all of such persons having sprung from the intestate's deceased brother, the grandnephews are entitled to receive their parent's share of the personal estate.

*Matter of Ebbets*, 43 Misc. 575; 89 Supp. 544.

*Matter of McGovern*, N. Y. L. J., March 26, 1903; distinguishing

*Matter of Davenport*, 172 N. Y. 454.

*Matter of Hadley*, 43 Misc. 579; 89 Supp. 545.

*Matter of Kearney*, N. Y. L. J., May 4, 1905.

*Matter of Rowe*, 103 Misc. 111, 170 Supp. 472.

Subdivision 12 of section 98 was further amended by chapter 539 of the Laws of 1905 to read:

“No representation shall be admitted among collaterals after brothers' and sisters' descendants. This act shall not apply to an estate of a decedent who shall have died prior to the time this act shall take effect.” And it now reads: “Prior to May 18, 1905.”

In the *Matter of Nichols*, 60 Misc. 299; 113 N. Y. Supp. 277, the court says:

“Under this subdivision, the descendants of brothers and

sisters to the remotest degree by representation share in the distribution of an estate. All collateral relatives, except descendants of brothers and sisters, are precluded from sharing in the decedent's estate by representation. Where they are all of the same degree of kinship, to wit, uncles and aunts, and nephews and nieces, the rule of representation does not apply, still they take by reason of that degree.

“In the case at bar, the uncles and aunt are of the third degree of kinship, while all of the cousins are of the fourth degree. It therefore follows that the cousins are precluded by reason of their degree of kinship, and by reason of the prohibition found in said subdivision 12, from sharing in the distribution of this estate. (*Matter of Davenport*, 172 N. Y. 454.) Subdivision 10 of section 2732 provides that, ‘Where the descendants, or next of kin of the deceased, entitled to share in this estate, are all in equal degree to the deceased, their shares shall be equal.’ ”

Following this it was held in the *Matter of Barry*, 62 Misc. 456, that where an intestate leaves no nearer kin than cousins and descendants of deceased cousins, the cousins take under subdivision 12, section 98, to the exclusion of the descendants of deceased cousins.

Nephews and grandnephews take per stirpes.

*Matter of De Voe*, 107 App. Div. 245; 94 Supp. 1129.

Where the surviving next of kin are first cousins and the children of deceased first cousins, under subdivision 12 the first cousins are entitled to the personal estate to the exclusion of such children.

*Adee v. Campbell*, 79 N. Y. 52.

## B.— GIFTS.

If the gift from a decedent is for any reason invalid the property claimed to have been given in fact remains a part

of the estate, and the title passes under the will or pursuant to the intestate law. Whether a gift is valid or invalid is one of the most frequently contested questions that arise in inheritance litigation. A peculiar feature of these contests is that the persons claiming exemption from the tax on the ground of a gift from the decedent would ordinarily receive the property in any event, for the executor would bear the burden of the contest were the claim of gift made by an outsider.

But even though the gift is valid the transfer under it may be taxable if the gift is intended to take effect in possession or enjoyment at or after death or made in contemplation thereof.

The statutes also tax transfers by deed, grant, bargain and sale when intended to take effect at death or made in contemplation of death. Where such transfers are donative in character and based upon inadequate consideration they are taxable; but the statutes do not apply to such transfers when they are based upon full and adequate consideration.

### 1. Valid and Invalid.

As we have seen, the first question arising is whether there was in fact a valid gift, or whether the title to the property is still in the estate of the deceased. To establish that the alleged gift is not a part of decedent's estate the evidence must show donor's intent to give, delivery of the thing given and acceptance by or on behalf of the donee.

*Beaver v. Beaver*, 117 N. Y. 421; 22 N. E. 940.

*Matter of Bolin*, 136 N. Y. 177; 32 N. E. 626.

#### a. BURDEN OF PROOF IS ON DONEE.

The court said in *Matter of O'Connell*, 33 App. Div. 483: "He who attempts to establish title to property through a gift *inter vivos* as against an estate of a decedent takes upon himself a heavy burden which he must support by evidence



of great probative force, which clearly establishes every element of a valid gift, viz., that the decedent intended to divest himself of the title in favor of the donee and accompanied his intent by a delivery of the subject-matter of the gift.”

To the same effect are:

*Matter of Perry*, 129 App. Div. 587; 114 Supp. 246.

*Doty v. Wilson*, 47 N. Y. 580.

*Beaver v. Beaver*, 117 N. Y. 421; 22 N. E. 940.

*Lehr v. Jones*, 74 App. Div. 54; 77 Supp. 213.

*Hemmerich v. Union Dime S. I.*, 205 N. Y. 366; 98 N. E. 499.

#### b. THERE MUST BE A PRESENT INTENT TO GIVE.

It is axiomatic that the gift must be *in praesenti* and not *in futuro*. A mere promise of a gift in the future does not constitute a good gift *inter vivos*.

“If the gift regards the future it is but a promise without consideration and has no validity.”

Parsons on Contracts (5th ed.), 15, § 1.

This principle is well illustrated in the case of *Holmes v. Roper*, 141 N. Y. 64; 36 N. E. 180. In this case a note was given without consideration. This note was handed and delivered by the deceased to his brother, and after his death the brother sued the executor, but was unsuccessful, for the court held that the note was a mere executory promise in the future and therefore was not good as a gift either *causa mortis* or *inter vivos*.

This principle was applied to a subscription to the building fund of a church: *Twenty-third Street Baptist Church v. Cornell*, 117 N. Y. 601, where the court said: “The promise died when she died, and was merely a good intention which did not survive her.”

Words which necessarily refer to the future cannot be construed to effectuate a present gift.

*Matter of Brown*, 86 Misc. 187; 149 Supp. 138; aff. 167 App. Div. 912.

*Matter of Somerville's Estate*, 20 Supp. 76.

## C. THERE MUST BE DELIVERY OF THE THING GIVEN.

“The necessity of delivery has been maintained in every period of the English Law.”

Kent's Commentaries, vol. 2, p. 348.

The principle was applied in *Harris v. Clark*, 3 N. Y. 93. The decedent gave a draft for \$30,000 to his sister upon R. Clark & Co., who had more than sufficient funds to meet it. The deceased had formerly been a partner of the concern, and it was amply solvent. But he died before his sister could present this draft to them for their acceptance. The court held that as there was no acceptance of the draft it was a mere promise to pay in case they did not pay, made without consideration and revoked by his death; also, as an order on R. Clark & Co. that it was revoked by his death.

The rule has been followed in these cases:

*Matter of King*, 51 Misc. 375, 381; 101 Supp. 279.

*Gegan v. Union Trust Co.*, 198 N. Y. 541; 92 N. E. 1085.

*Matter of Crawford*, 113 N. Y. 366; 21 N. E. 142.

In a box kept by decedent at his bank marked with his name and that of his sister-in-law there were unrecorded deeds from him to his sister-in-law, and also executed assignments of certain stock and a mortgage, and certificates of deposit endorsed on the back by him to the order of another sister-in-law. The several documents were in envelopes on which the decedent had written “the property of” with the name of the person: Held, no delivery and taxable as part of decedent's estate.

*Matter of Sharer*, 36 Misc. 502; 73 Supp. 1057.

## d. DELIVERY TO AN AGENT.

The rule seems to be: That a delivery to an agent or trustee of a donee is good; but that a delivery to an agent or servant of the donor is not and cannot be good delivery

to the donee for the reason that the donor may countermand the gift at any time prior to the delivery by his agent to the beneficiary.

(1) *To Agent of Donor.*

A delivery to the agent of the donor to be delivered to a third person is not a good delivery. This rule is as old as the common law. In *Lyte et Ux. v. Peny*, Easter Term, 33 Hen., VIII, a man gave money to third person to be delivered to a woman on the day of her marriage. The question was whether before her marriage he could countermand and revoke the gift. It was held that he could do so, the court reasoning: "For if a man delivers to his servant on New Year's Day a golden cup to give as a New Year's gift to a stranger, clearly he may countermand this, notwithstanding the gift, for it was not a gift perfectly executed."

So where a decedent had given an order on a bank to transfer her account to the joint names of herself and her husband and died before the order was executed; held, no gift.

*Augsbury v. Shurtliff*, 180 N. Y. 138; 72 N. E. 927.

The same rule is laid down in *Sessions v. Moseley*, 4 Cush. (Mass.), 87, at page 92: "If, therefore, it be delivered to a third person with authority to deliver it to the donee, this depository, until the authority is executed by actual delivery to and acceptance by the donee, is the agent of the donor, who may revoke the authority and take back the gift, and therefore if the delivery does not take place in the donor's lifetime, the authority is revoked by his death; the property does not pass but remains in the donor and goes to his executor or administrator."

This rule was followed in:

*Clapper v. Frederick*, 199 Pa. St. 609; 49 A. 218.

*Wadd v. Hazleton*, 137 N. Y. 215; 33 N. E. 143.

*Matter of Loewi*, 75 Misc. 57; 134 Supp. 679.

The delivery to the agent must be accompanied by the intent to give. If he holds as bailee his possession is not such as to complete delivery.

*Matter of Palmer*, 117 App. Div. 360; 102 Supp. 236.

*Matter of Bolin*, 136 N. Y. 177; 32 N. E. 626.

In the *Bolin* case, Julia Cody, the decedent, deposited money in the savings bank, "Julia Cody or daughter, Bridget Bolin." Before Mrs. Cody died and during her last illness all of her property, including the savings bank pass-book, came into the possession of her daughter. The court says at page 179: "Nor was the custody of the pass-book by the daughter such a possession as evinced an intention to transfer the ownership of the moneys deposited to the daughter." In other words, the daughter's possession was as bailee for her mother, and could not inure to her benefit as the recipient of a gift.

(2) *To Agent of the Donee.*

When, however, the third person is held to be the agent of the donee, the delivery is complete.

In *Matter of Mills*, 172 App. Div. 530; 158 Supp. 1100; aff. 219 N. Y. mem., the decedent, Darius O. Mills, was ill in California. All his securities were in possession of his son, Ogden Mills, in a safe deposit box in New York. The decedent wrote to his son that he wished to give \$1,000,000 each to him and to his sister, Mrs. Whitelaw Reid, as a Christmas present in Atchison stock, and directed his book-keeper to make entries in his books to that effect. It was held that, as the son was already in possession, delivery would be "an idle ceremony," and that the son was the agent of his sister and therefore the delivery to her was also complete.

So, where a deed was delivered to a third party to be delivered to the grantee after the death of the grantor, and no right of revocation was reserved, the delivery was held

to be complete. This delivery was effected prior to the act of 1911 by which California taxed gifts to take effect at death and the statute was held not to apply to the transfer as it was completed prior to the act.

*Hunt v. Wicht*, 174 Cal. 205; 162 Pac. 639.

A similar doctrine was followed in Pennsylvania, in *Commonwealth v. Kuhn*, 2 Pa. Co. Ct. 248. Here the decedent had conveyed his property in trust to assign it as he might appoint in his will or, in default of appointment, to his heirs. No right of revocation was reserved. The deed was executed in Pennsylvania in 1857 and the grantor afterwards moved to New York, where she died in 1885. The court held that the deed was an instrument intended to take effect after death, and was subject to the tax imposed by the act of 1826,—for the transfer was completed in 1857, but did not take effect until death, and was made subsequent to the act imposing the tax.

e. SYMBOLICAL DELIVERY.

Symbolical delivery has been held sufficient in these cases:

By a key to a safe deposit box:

*Gilkinson v. Third Ave. Railroad Co.*, 47 App. Div. 472; 63 Supp. 792.

By a savings bank book:

*McGuire v. Murphy*, 107 App. Div. 104; 94 Supp. 1005.

By written memorandum:

*Champney v. Blanchard*, 39 N. Y. 11.

f. RE-DELIVERY BY DONEE TO DONOR.

The gift may be redelivered by the donee to the donor to hold as agent.

*Gannon v. McGuire*, 160 N. Y. 476; 55 N. E. 7.

But if the delivery and re-delivery are so connected as to amount to one transaction and the donor thereafter

retains full power of control and the income for his own benefit there has been no transfer of title and hence no gift.

*Matter of Brandreth*, 169 N. Y. 437; 62 N. E. 563.

If on the other hand, the title has passed and the donor holds the property as agent for and acts in good faith on behalf of the donee and not for himself the fact that he does so is not evidence that no gift was intended or took place.

*Matter of Hendricks*, 163 App. Div. 413; 148 Supp. 511; aff. 214 N. Y. 663.

In the *Hendricks* case the court said: "The learned Surrogate, as appears from his opinion, reached the conclusion which he did by reason of the fact that the control which this deceased could exercise over the stocks was greater than that reserved to the donor in *Matter of Brandreth*, 169 N. Y. 437 and *Matter of Cornell*, 170 id. 423. But it is the source and not the extent of the control which is important. In each of these cases the donor, at the time of making the gifts, reserved to himself the income of the property during his life. To that extent the gifts were conditional. Here the transfers of the certificates did not have attached to them any condition or reservation whatever. The source of the donor's control was an agreement subsequent to the gifts and not a condition attached to them. The stocks in question did not belong to the deceased at the time of his death, they are not a part of his estate, and, therefore, not subject to a tax. A conclusion to the contrary would be without evidence to support it."

So, where a husband endorsed over to his wife five notes and thereafter, by a separate instrument she gave him the proceeds thereof during life, Surrogate Cohalan held that, under the decision in the *Matter of Hendricks* the

title passed and that no transfer took place at death. This would seem to afford an opening for avoiding the rule that a gift reserving a life use is taxable as a transfer to take place at death.

*Matter of Cahen*, N. Y. L. J., August 6, 1915.

#### g. POWER OF REVOCATION.

Where a power to revoke the gift is reserved by the donor and he dies without exercising the power the gift is not absolute and complete until death for, though the title has vested in the donee it is subject to be divested by the act of the donor. Under these circumstances the transfer under the revocable gift is held to be taxable.

*Re Douglas County*, 84 Neb. 506; 121 N. W. 593.

*Matter of Green*, 153 N. Y. 223; 47 N. E. 292.

*Matter of Brandreth*, 169 N. Y. 437; 62 N. E. 563.

*Matter of Cornell*, 170 N. Y. 423; 63 N. E. 445.

*State v. Bullen*, 143 Wis. 512; 128 N. W. 109.

*Re Wright*, 38 Pa. St. 507.

The courts have made an apparent exception in the matter of bank accounts taken in trust for another.

A deposit by one person of his own money, in his own name as trustee for another, standing alone, does not establish an irrevocable trust, during the lifetime of the depositor. It is a tentative trust, merely revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass-book or notice to the beneficiary. In case the depositor dies before the beneficiary without revocation or some decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor.

*Matter of Totten*, 179 N. Y. 112; 71 N. E. 748.

*Matthews v. Brooklyn Sav. Bk.*, 208 N. Y. 508; 102 N. E. 520.

But where the beneficiary dies before the depositor the trust is terminated and no title passes.

*Matter of U. S. Trust Co.*, 117 App. Div. 178; 102 Supp. 271; aff. 189 N. Y. 500; 81 N. E. 1177.

*Matter of Duffy*, 127 App. Div. 74; 111 Supp. 77.

Where one deposits money in a bank in his own name in trust for his sister, who had no knowledge that such an account was opened and who died before the depositor, he exercising sole dominion over the account and drawing the interest thereon before and after her death, there is no presumption that a trust was created in favor of the sister or her estate, although the depositor died without changing the account. On the contrary the presumption arises that the account was so kept for ulterior motives,

*Garvey v. Clifford*, 114 App. Div. 193; 99 Supp. 555.

and such a deposit is subject to the right of creditors after death of depositor.

*Beakes Dairy Co. v. Berns*, 128 App. Div. 137; 112 Supp. 529.

But it is held that such deposits constitute a gift to take effect at death and are, therefore, taxable.

*Matter of Palm*, 148 Supp. 1044.

*Matter of Halligan*, 82 Misc. 30; 143 Supp. 676.

*Matter of Crusius*, N. Y. L. J., February 26, 1914.

Where, however, the beneficiary of the trust has notice of the gift before the death of the donor, the transfer of title is held complete and an irrevocable trust established, so that no tax is imposed.

*Matter of Brennan*, 92 Misc. 423; 157 Supp. 141.

*Matter of Rudolph*, 92 Misc. 347; 156 Supp. 825.

As a general rule where there is a power to revoke no gift is consummated and the property remains that of the donor, passing at his death and subject to tax.

In *Matter of Dana*, 215 N. Y. 461; 109 N. E. 557, the



court said: "The trust instrument was essentially testamentary in character. It reserved to the donor the income from the stock during his lifetime; the right to direct how the trustee should vote thereon; the power to cause the trustee to sell the stock in such manner and at such price as the donor might direct; the right to substitute a different trustee at will; and the absolute right of revocation at any time during the lifetime of the donor. In fact, after the execution of the deed of trust Mr. Dana still retained just as much power over the stock as he would have had if he had disposed of it by will instead of executing the instrument which he delivered to Mr. Seibert. There was no element of finality about the instrument during the donor's lifetime, for it was just as capable of revocation as a will would have been."

See *post*, p. 131.

#### h. STOCK TRANSFER STAMPS.

Under the New York tax on transfers of stock the statute requires the stamps to be affixed at the time of the transfer. In case of failure to do so no evidence of the gift can be received in any court, under the statute. If no stock transfer stamps were affixed by donor of stock at the time of the gift and objection to evidence of an alleged gift is made on that ground before the appraiser it must be stricken out.

*Matter of Ball*, 161 App. Div. 79; 146 Supp. 499.

*Matter of Church*, N. Y. L. J., June 5, 1916; aff. 176 App. Div. 910.

*Matter of Houseman*, 182 App. Div. 37.

But it is too late to take the objection on appeal to the surrogate or to move to strike out the evidence admitted by the appraiser when the point was not raised before him.

*Matter of Cleveland*, 171 App. Div. 908; 155 Supp. 1098.

*Matter of Mills*, 172 App. Div. 530; 158 Supp. 1100; aff. 219 N. Y. 100.

## i. CONSIDERATION.

If the donee gives full consideration of course it is not a gift but a *contract*, and if the title passes and the transaction is completed *inter vivos* no tax is imposed.

*Matter of Thorne*, 44 App. Div. 8; 60 Supp. 419.

*Matter of Hess*, 110 App. Div. 476; 96 Supp. 990; aff. 187 N. Y. 554; 80 N. E. 1111.

*Matter of Edgerton*, 35 App. Div. 125; 54 Supp. 700; aff. 158 N. Y. 671; 52 N. E. 1124.

See *post*, p. 136.

## 2. Gifts Causa Mortis.

A gift *causa mortis* is revocable at any time by the donor and becomes void if the donee dies first. It is therefore not only in contemplation of death but title to the property is subject to be defeated by donor's revocation.

*Ridden v. Thrall*, 125 N. Y. 572; 26 N. E. 627.

In the early cases in New York it was substantially held that there was no distinction between gifts *causa mortis* and gifts in "contemplation of death."

*Matter of Spaulding*, 49 App. Div. 541; 63 Supp. 694; aff. 163 N. Y. 607; 57 N. E. 1124.

But this view is held too narrow by the courts of other States.

*Estate of Reynolds*, 169 Cal. 600; 147 Pac. 268.

See, however, as to rule in California,

*Spreckles' Estate*, 30 Cal. App. 363; 158 Pac. 549.

See also California statute of 1917, Appendix.

It is no longer entertained by the courts of New York.

*Matter of Dee*, 148 Supp. 423; aff. 161 App. Div. 881; 145 Supp. 1120; aff. 210 N. Y. 625.

It is now universally held that though such gifts are

not *causa mortis* and are complete *inter vivos* yet they are taxable if clearly made "in contemplation of death."

*Merrifield v. People*, 212 Ill. 400; 72 N. E. 446.

*State v. Pabst*, 139 Wis. 561; 121 N. W. 351.

In the *Merrifield* case it was held that under the Illinois statute of 1895 the gift was subject to the tax although the transfers made in contemplation of death were absolute and the donees accepted the property and assumed absolute possession and ownership thereof while the donor parted with all right, title or interest therein. It was contended on behalf of the estate that a gift *causa mortis* is a transfer of property made without consideration in contemplation of death, and that the stipulation that the gift was absolute prevented it from being a gift *causa mortis*. But the court found that as the gifts were made in contemplation of death they were gifts *inter vivos* made in contemplation of death and within the designation of gifts *causa mortis*.

### 3. Gifts in Contemplation of Death.

#### a. NATURE OF THE "CONTEMPLATION."

It is not the general knowledge of all men that they must "die sometime;" or, as Lord Mansfield put it, that "we all have in us the seeds of mortality." The grantor must have in mind some condition of health or infirmity.

The rule was recently clearly stated by the Appellate Court of Indiana in *Conway's Estate*, 120 N. E. 717, decided Nov. 1918, where the court said:

"It is a generally recognized principle or rule of law that inheritance tax statutes are not intended to take away the right of a person to make an absolute gift and transfer of his property, but they are intended to impose the tax upon transfers of property by will, by the laws of inheritance, and by such other gifts of transfers as are of like nature and may properly be classed therewith. When such

statutes have been enacted, it is the policy of the law that the owner of the property shall not evade the law, or defeat the purpose of its enactment by any form of conveyance or transfer, where the facts clearly and reasonably bring such transfer within the provisions of the enactment (*Rosenthal v. People*, 211 Ill. 306; 71 N. E. 1121; *Merrifield's Estate v. People*, 212 Ill. 400; 72 N. E. 446, 447; *State Street Trust Co. v. Stevens*, 209 Mass. 373; 95 N. E. 851.)

“The words ‘in contemplation of death’ as used in inheritance tax statutes do not refer to that general expectation of death entertained by all persons, but they do refer to that expectation of death which arises from such bodily or mental conditions, irrespective of the cause in any particular case, which prompts persons to dispose of their property to those they deem entitled to their bounty.

“Those words,—when employed in taxation statutes, are not restricted to the technical meaning of such phrases when applied to gifts *causa mortis*, but are given a reasonable and liberal interpretation, which tends to make effectual such taxation laws without destroying the right of the owner of the property to make an absolute gift of the same. Gifts *causa mortis* come within the provisions of the statute, and likewise gifts *inter vivos* made in contemplation of death.”

Facts or circumstances must be adduced to show some existing condition of mind or body from which an apprehension of death might arise.

*Matter of Spaulding*, 49 App. Div. 541; 63 Supp. 694; aff. 163 N. Y. 607; 57 N. E. 1124.

It is therefore a question of fact and must depend upon the circumstances of each particular case.

*People v. Kelly*, 218 Ill. 509; 75 N. E. 1038.

*Matter of Mahlstedt*, 67 App. Div. 176; 73 Supp. 818.

and the burden of proof is on the State.

*State v. Thompson*, 154 Wis. 320; 142 N. W. 647.

But “To prove that property is transferred in contemplation of death is exceedingly difficult, as the only parties whose intimacy with a decedent would afford them an opportunity of being cognizant of his intentions are usually those whose interests would be served by testimony to the effect that the gift was not made in contemplation of death and the State is, therefore, compelled to rely upon conclusions derived from the testimony of witnesses who are interested in disproving its contention. It is also in large measure the attempted proof of the operations of a man’s mind.”

*Matter of Price*, 62 Misc. 149-152; 116 Supp. 283.

So when it appears that the deceased had had two paralytic strokes the court is bound to presume that a gift has been made in view of death.

*Williams v. Guile*, 117 N. Y. 343, 349; 22 N. E. 1071.

And the fact that the donor, a physician, was seen making a stethoscopic examination of his own chest at about the time of the gift and the next day died suddenly was held sufficient, with the surrounding circumstances, to show the “contemplation” required by the law.

*Matter of Dee*, 161 App. Div. 881; 145 Supp. 1120; aff. 210 N. Y. 625.  
See also *Matter of Rundell*, 179 App. Div. 978.

A gift of property made by the donor for the purpose of so reducing his estate that a step-son would not get it from his mother, when the donor was suffering with Bright’s disease, was held a gift in contemplation of death.

*Re Estate of Benton*, 234 Ill. 366; 84 N. E. 1026.

The legal contemplation required has been thus defined in a well considered case in Wisconsin:

“It is manifest the words were intended to cover transfers by parties who were prompted to make them by reason of the expectation of death, and which, in view of that

event, accomplish transfers of the property of decedents in the nature of a testamentary disposition. It is therefore obvious that they are not used as referring to that expectation of death generally entertained by every person. The words are evidently intended to refer to an expectation which arises from such a bodily or mental condition as prompts persons to dispose of their property and bestow it upon those whom they regard as entitled to their bounty. This accords with the general objects and purposes of the law, namely, the imposition of a tax upon the devolution of property involved in the demise of the owner.

*State v. Pabst*, 139 Wis. 561, 590; 121 N. W. 351.

The adequacy of the consideration must be considered as a fact bearing on the "contemplation."

*Abstract and Title Guarantee Co. v. State*, 173 Cal. 691; 101 Pac. 264.

The Illinois court took a similar view:

"A gift is made in contemplation of an event when it is made in expectation of that event and having it in view; and a gift made when the donor is looking forward to his death as impending, and in view of the event is within the language of the statute. \* \* \* The preparation of the will, under the circumstances and in view of the rapid progress of the disease, is strong evidence that death was expected and no other moving cause than the expectation of death is apparent. While the widow and the physician testified that the deceased did not expect to die they also said that it was not the subject of conversation at all, and in view of his condition it is a fair inference that he was not so dull of comprehension as to suppose he would get well."

*Rosenthal v. People*, 211 Ill. 306; 71 N. E. 1121.

In a California case when the decedent was suffering from a mortal disease at the time of the gift the court

said: "Coming then to the testimony in the case, we have already spoken of the physical condition of the deceased and of his knowledge of the character of his ailment. The transfers to his wife were admittedly gifts, pure and simple. They were made prior to and following an operation 'considered absolutely necessary to save his life.' Mrs. Reynolds speaks of the transfers to her as gifts and says that they were made under Mr. Reynolds' promise to make provision for her. After his death she filed her election to take these gifts instead of the benefits under the will. All this was done under the agreement that she had had with Mr. Reynolds, that the property given to her was in lieu of all rights and claims which she might have against his estate. It would seem to be clear beyond peradventure that as to these transfers, they were made in that contemplation of death which the law designates, and that they were gifts in life substituted for gifts by will."

*Estate of Reynolds*, 169 Cal. 600; 147 Pac. 268.

All the cases agree that contemplation of death must be the impelling motive without which the transfer would not have been made.

*People v. Burkhalter*, 247 Ill. 600; 93 N. E. 379.

#### b. ADVANCED AGE ALONE INSUFFICIENT.

Merely that the deceased had reached an advanced age is not sufficient evidence that the gift was made in contemplation of death. So it was held when there were several large gifts to a child by an aged parent, sound in body and mind, they could not be subjected to the tax merely because the donor had reached an unusually advanced age. The Wisconsin court said: "The gifts were a perfectly natural disposition of his estate and were equally as consistent with a desire to see his daughter and family enjoy the fruits of his accumulation and to observe the use they made thereof during his lifetime."

The burden is on the public officials to show that gifts were made in contemplation of death. A gift by a father eighty-six years old in good health was not made in contemplation of death in *In re Dessert's Estate* (Wis.), 142 N. W. 647.

*State v. Thompson*, 154 Wis. 320; 142 N. W. 647.

The California court has recently gone a step further in the *Matter of Spreckles*, 30 Cal. App. 363; 158 Pac. 549, where Mrs. Spreckles, the widow of the "Sugar King" put her millions into a trust and gave the stock to her children when at the age of 79 and suffering from a dangerous heart disease. She died within a month after the gifts. The court acknowledged that it was a close case but sustained the decision of the trial court whereby the estate escaped taxation on the theory that though the decision might be against the weight of evidence there was some testimony to support it and therefore it could not be disturbed. But the reasoning of the court practically confines such gifts to gifts *causa mortis* though former cases in that State, as we have seen, have repudiated that rule. In reviewing the testimony the court said:

"In support of appellant's position it is pointed out that Mrs. Spreckles, at the time of the execution of the transfer, was a woman of venerable years, at best not far removed from the natural end of her life; that for many years prior to and up to the time of the transfer she had been a chronic sufferer from a serious and dangerous heart trouble which was of a nature that from it her death might suddenly occur at any moment, a condition of which she undoubtedly possessed a keen realization; that, as a matter of fact, her death occurred within a few weeks after she made the transfer."

Conceding that this testimony would bring the case within the statute the court recapitulates the testimony produced by the estate as follows:



“Shortly after her husband’s death in 1908, Mrs. Spreckles expressed her intention of forming a corporation for the avowed object of transferring her property thereto. She had often declared her intention of giving her property to the plaintiffs, and to Mr. Rudolph Spreckles, stated her wish that her children, the plaintiffs, should own and enjoy the property in her lifetime. These ideas seemed at all times and prior to the date of the transfers to have constituted the central thoughts of her mind until their crystallization by the organization of the investment company, the immediate transfer of the greater part of her estate thereto, and thereupon the transfer of the stock therein to the plaintiffs. Under the circumstances it was, without any thought of her own death or without any view to preparation therefor, a most natural thing to do. At her then advanced age, having other means far more than necessary for her own maintenance for the remainder of her life, she doubtless believed that she would in her declining days be happiest if relieved of the heavy burden and serious responsibilities which necessarily go with the control and management of vast and varied property interests such as she was the owner and possessor of and that in obtaining release from their burdens her happiness would be the more certainly assured by transferring her property to her children so that they might own and enjoy it during her lifetime. While she was afflicted with a serious heart affection and had suffered intermittent spells of illness that temporarily confined her to her bed, it is evident that she did not, at any time prior to the date of the transfers, harbor the thought that her life was in immediate peril from her malady, or that she would not live for many years to come.”

In support of this last assertion the court cites the fact that the deceased was repairing her residence at much expense and talked of going to Europe. Under the court’s

theory nothing short of proving that the deceased made the transfers on her death bed would have made the gift of all her property one in contemplation of death.

[See California Statute of 1917 — Appendix.]

In the *Matter of Mills*, 172 App. Div. 530; 158 Supp. 1100; aff. 219 N. Y. 642, the donor was 84 years old and in failing health, unable to write, and barely able to sign his name, but gifts of \$2,000,000 to his children were sustained as not taxable though he died ten days later.

This rule has proved so unsatisfactory that Surrogate Cohalan of New York County has promulgated another doctrine which would go far to solving a problem that has provoked drastic legislation of doubtful constitutionality. In *Matter of Dunne*, N. Y. Law Journal, May 25, 1914, he stated the doctrine as follows:

“When a person reaches the age of 80 years and makes a gift of a substantial part of his property, the presumption is that the gift is made because the donor realizes that in the ordinary course of nature he cannot survive much longer and wishes to anticipate the effect of a will or the intestate laws by giving his property to those persons who would be legatees under a will or beneficiaries under the intestate laws. If such gifts were not taxable, the provisions of the Transfer Tax Law could be nullified and rendered ineffective. To prevent such an evasion of the law the statute provides that such gifts shall be taxable in the same manner as if the property constituting the gift were transferred by will or under the intestate laws. I think the evidence before the appraiser was sufficient to warrant his finding that the conveyance of the premises by the decedent to her son Charles Dunne constituted a gift in contemplation of death and that it was therefore subject to a transfer tax.”

This suggestion has not been generally followed and in

fact the contrary doctrine seems so firmly established by the authorities that the remedy, if any, is for the Legislatures. In the recent case of *McDougald v. Wulzen*, 34 Cal. App. 31; 166 Pac. 1033, deeds were executed by a husband of 83 to his wife a year and six months prior to his demise and the gift was held not to be in contemplation of death.

But advanced age may be taken into consideration when coupled with other circumstances concerning the physical condition of the donor.

*Matter of Fitzgibbon*, 106 Misc. 130; 173 Supp. 898.

#### C. STATUTORY TIME LIMIT.

It was to cover cases like those of Mills and Spreckles that Judge McElroy in his able work on "Inheritance Taxation" made this suggestion, at page 109:

"A provision in the statute fixing a definite time prior to death, within which gifts would be deemed 'made in contemplation of death,' would settle all contention in respect to gifts of this kind, but as yet the wisdom, or even the necessity, of such a provision has not received the consideration of the Legislature."

This suggestion has been adopted by Colorado, Wisconsin and several other States as well as by the Federal statute; but has not yet been construed by the courts. There may be some question as to its constitutionality. If a young man in good health deeds his home to his wife, and the next day is struck by lightning, or is killed in an accident, the gift would be taxable under such a statute. As to whether the courts would sustain such a tax, quære.

#### D. TAX ACCRUES AT DATE OF GIFT.

Theoretically the tax accrues at the date of a gift in contemplation of death, though proceedings are in practice never brought to collect it until death reveals the facts.

It would seem unjust to impose interest for six years when the gift was made that length of time prior to the statute; but such is the logic of the case.

*Matter of Hodges*, 215 N. Y. 447; 109 N. E. 559.

*Felton's Estate* (Cal.), 169 Pac. 392.

The court said in the *Hodges* case:

“Here, however, under the express provisions of the Tax Law (§ 222) the gift of bonds and securities to the wife was taxable as soon as it was made. As such gifts seldom become known to the taxing authorities until after the death of the person making them there is usually no effort to tax them earlier; but this fact does not affect their liability to earlier taxation if ascertained.”

There are, however, two reasons why estates have contended for this rule: first the general increase in rates makes it desirable to have the tax imposed under earlier statutes and second there being a distinct and separate transfer the graded rates are lessened. For example, if the gift in contemplation took effect five years before death and \$100,000 passed then and \$100,000 more at death, the tax would be computed upon two transfers of \$100,000 each and not upon one transfer at death of \$200,000. Under such circumstances the question of interest becomes unimportant.

#### **4. Gifts to Take Effect at or after Death.**

Practically all the statutes tax such gifts, and they are to be distinguished from gifts in contemplation of death which form another and entirely distinct class of taxable transfers. There must be an intent to postpone the passing of title. For example, where a deed was executed and delivered upon consideration of an agreement to support but was not recorded until after death the conveyance was complete and the transfer was not taxable.

*Kelly v. Woolsey* (Cal.), 170 Pac. 837.

A gift to take effect after death but made prior to the statute taxing such gifts is not taxable, as title has passed though possession and enjoyment are postponed.

*Lewis v. Brown* (Ia.), 166 N. W. 99.

So, if the life use reserved is terminated before the death of the grantor there is no postponement of possession and no tax.

*Brown v. Guilford* (Ia.), 165 N. W. 182.

a. TRUST DEED RESERVING INCOME TO DONOR.

Where the grantor reserves to himself a life interest and the income is paid to him the gift of the remainder interest under the deed is a taxable transfer.

The application of this doctrine recently received an apt illustration in *Matter of Garcia*, 183 App. Div. 712; 170 Supp. 980, where the court said:

“The widow, of course, took the corpus of the trust by virtue of the trust agreement and not under the will. That, however, does not necessarily indicate whether it was taxable, or, if taxable, when she took it. If it were a completed gift *inter vivos*, vested in possession and enjoyment, neither contingent on the wife surviving her husband nor made in contemplation of death, then, of course, it would become effective at once as an executed gift, and would not be subject to the transfer tax; and if a completed gift *inter vivos*, but made in contemplation of death, or intended to take effect in possession or enjoyment at or after the death of the donor, then, too, she would take as of the date of the execution of the trust agreement, and the transfer tax accrued immediately upon the transfer, which at once became effective; but, if the gift of the corpus to her was in the nature of a testamentary disposition thereof, then, although evidenced by a separate instrument, for the purpose of determining the rate of taxation and exemptions, it should be added to the legacy and other bequests which she took

under the will at the same time (*Matter of Hodges*, 215 N. Y. 447; 109 N. Y. 559; *Matter of Thompson*, 167 App. Div. 356; 153 N. Y. Supp. 164; *Matter of Van Cott*, 180 App. Div. 814; 168 N. Y. Supp. 95; *Matter of Bostwick*, 160 N. Y. 489; 55 N. E. 208; *Matter of Cornell*, 170 N. Y. 423; 63 N. E. 445), and there should be only one exemption, for the sole purpose of the amendment to section 221a of the Tax Law, made by chapter 664 of the Laws of 1915, after the statute had been construed as granting an exemption on each transfer (*Matter of Hodges*, 86 Misc. Rep. 367; 148 N. Y. Supp. 424; affirmed on Surrogate Fowler's opinion 168 App. Div. 913; 152 N. Y. Supp. 1117, and affirmed 215 N. Y. 447; 109 N. E. 559), appears to have been to require that all of the property transferred at the same time should be considered together, as if embraced in a single transfer.

By section 220, subs. 1, 2, and 3 of the Tax Law (chapter 60, Consol. Laws), as amended by chapter 323, Laws of 1916, which took effect before the death of the testator, a tax was imposed upon the transfer of any tangible property within the State, and of intangible property or of any interest therein or income therefrom, whether in trust or otherwise, subject to certain exemptions not here involved. The statute relates to any interest in property in possession or enjoyment present or future, passing not only by will, but also by inheritance, descent, grant, deed, bargain, sale, or gift in the manner prescribed in the statute (sections 220 and 243, Tax Law); and, so far as material to the decision of this appeal, the manner so prescribed is found in subdivision 4 of said section 220, and is "by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death." Subdivision 5 of said section also provides that a tax shall be imposed upon the transfer of such property, when the transferee becomes beneficially entitled in possession or expec-

tancy, to any property or the income thereof by any transfer, as provided in the preceding subdivisions of the section, whether made before or after the enactment of the statute. It is perfectly clear that the gift of this trust fund to the widow was not intended to take effect in possession or enjoyment until after the death of the testator. Her estate or interest was not only future, but it was wholly contingent, depending on her surviving the donor, and also on whether the trustees resigned or died without naming their successors, and whether in that event the testator elected to appoint successors to the trustees or to terminate the trust. Although he did not reserve unconditionally the right of control or revocation, he did not part with all interest in or control over the property; and it is perfectly plain that he did not intend that his wife should take any interest in the corpus personally unless she survived him."

The general doctrine is established by numerous cases.

*Carter v. Bugbee* (N. J.), 103 A. 818.

*Matter of Green*, 153 N. Y. 223; 47 N. E. 292.

*Matter of Keeney*, 194 N. Y. 281; 87 N. E. 428; aff. 222 U. S. 525.

*Matter of Bacon*, 226 N. Y. (mem.).

In the *Keeney* case Judge Cullen, writing for the court, says at page 286:

"A not wholly unnatural desire exists among owners of property to avoid the imposition of inheritance taxes upon the estates they may leave so that such estates may pass to the objects of their bounty unimpaired. It is a matter of common knowledge that for this purpose trusts or other conveyances are made whereby the grantor reserves to himself the beneficial enjoyment of his estate during life. Were it not for the provision of the statute which is challenged, it is clear that in many cases the estate, on the death of the grantor, would pass free from tax to the same persons who would take it had the grantor made a will or died intestate. It is true that an ingenious mind may devise other means

of avoiding an inheritance tax, but the one commonly used is a transfer with reservation of a life estate. We think this fact justified the Legislature in singling out this class of transfers as subject to a special tax."

In the same case the U. S. Supreme Court said, Judge Lamar writing the opinion:

"There is no natural right to create artificial and technical estates with limitations over, nor have the remaindermen any more right to succeed to possession of property under such deeds than legatees or devisees under a will. The privilege of acquiring property by such an instrument is as much dependent upon the law as that of acquiring property by inheritance; and transfers to take effect at death have frequently been classed with death duties, legacy and inheritance taxes."

*Keeney v. New York*, 222 U. S. 525, 533; 32 S. Ct. Rep. 105.

To the same effect are:

*Matter of Bostwick*, 160 N. Y. 489; 55 N. E. 208.

*Matter of Dana*, 215 N. Y. 461; 109 N. E. 557.

*Matter of Beal*, 167 App. Div. 916; 151 Supp. 1103; aff. 215 N. Y. 620.

*Matter of Patterson*, 146 App. Div. 286; 130 Supp. 970; aff. 204 N. Y. 677.

*Matter of Ogsbury*, 7 App. Div. 71; 39 Supp. 987.

*Matter of Cowan*, N. Y. L. J., July 24, 1913.

*New England Trust Co. v. Abbott*, 205 Mass. 279; 91 N. E. 379.

*Re Douglas County*, 84 Neb. 506; 121 N. W. 593.

*Lines' Estate*, 155 Pa. St. 378; 26 A. 728.

*Reisch v. Commonwealth*, 106 Pa. St. 521.

*Appeal of Seibert*, 110 Pa. St. 324; 1 A. 346.

*Lamb v. Morrow*, 140 Ia. 89; 117 N. W. 1118.

*State v. Bullen*, 143 Wis. 512; 128 N. W. 109; aff. 240 U. S. 625.

In the recent case of *Bullen v. Wisconsin*, 240 U. S. 625, (sustaining *State v. Bullen*, 143 Wis. 512, *supra*) the whole subject of trust deeds reserving life use and power of revocation was again discussed. In this case the decedent gave a fund of \$1,000,000 to a Trust Company in Illinois, reserv-



ing a part of the income, the rest to his wife and four sons and on his death the principal to them. He also reserved a right to revoke and a right to control the investment of the fund. He then incautiously moved to Wisconsin and changed his domicile to that State leaving the corpus of the trust fund in Illinois. Result; the fund was taxed in both States and the heirs appealed to the United States Supreme Court. Mr. Justice Holmes speaking for the court says, at page 630:

“We do not speak of evasion because when the law draws a line a case is on one side of it or the other and if on the safe side is none the worse legally that a party has availed himself to the full extent of what the law permits. When an act is condemned as an evasion what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law. What we do say is that the Supreme Court of Wisconsin was fully justified in treating Bullen’s general power of disposition as equivalent to a fee for the purposes of the taxing statute, that there is no constitutional objection to its doing so, and that although Illinois has also taxed the fund, as it might, we are not aware that it has attempted to qualify the effect that Wisconsin has given to the power and do not intimate that it could have done so if it had tried.”

Where the decedent made an absolute deed of land and took a bond back from the grantee to pay the income to the grantor for his life, this is a conveyance in contemplation of death within the terms of the Pennsylvania inheritance tax of 1826, especially where it was made during the last sickness of the grantor. “It is true, the obligation of the bond was not inserted as a condition or reservation in the deed; it was in form a mere personal obligation; but this contention does not involve a technical question of title nor of lien; the whole matter depends upon the single fact whether or not the transfer was made or intended to take

effect in enjoyment at the death of the grantor. The policy of the law will not permit the owner of an estate to defeat the plain provisions of the Collateral Inheritance Law, by any devise which secures to him, for life, the income, profits, and enjoyment thereof; it must be by such a conveyance as parts with the possession, the title, and the enjoyment in the grantor's lifetime.

*Reish v. Commonwealth*, 106 Pa. St. 521, 526.

b. WHEN PART OF THE INCOME IS RESERVED.

And so it is held that when a part of the income is reserved the remainder created is taxable *pro tanto*, where severable.

When a trust deed, not made in contemplation of death, takes effect on delivery for the sole benefit of the *cestuis que trustent* except that the grantors reserve the right to themselves or the survivor to an annual income of \$2,400 per year for life, the court may separate the portion to take effect *in presenti* and *in futuro*, and hold that so much of the estate conveyed as was necessary to produce an annual income of \$2,400 is subject to an inheritance tax.

*People v. Kelly*, 418 Ill. 509; 75 N. E. 1038.

A trust deed reserving life estate made by a non-resident of property out of the State does not become a taxable transfer because the property is subsequently invested in New York.

*Matter of Dwight*, N. Y. L. J., October 8, 1911; aff. 149 App. Div. 912; 133 Supp. 1119.

c. WHERE LIFE USE IS WAIVED.

It has been held in Iowa that the remainderman may show by parol evidence that the donor, subsequent to the delivery of the deed, waived the life use, and that an absolute title vested.

*Lamb v. Morrow*, 140 Ia. 89; 117 N. W. 1118.

Aside from any question of evidence there can be no doubt that if the life use was in fact terminated and title and possession both vested prior to death there was no postponement, the deed took effect *inter vivos* and no tax could be imposed under such circumstances.

*Brown v. Guilford* (Ia.), 162 N. W. 182.

#### d. RESERVATION OF POWER TO REVOKE.

The authorities draw a sharp distinction between deeds of trust reserving a life use where there was reserved also a power to revoke and such deeds where the transfer was absolute. If such a deed contains no such power of revocation it took effect at the date of the deed, and if that date was prior to the statute or the deceased was at the time a non-resident the remainder is not taxable on the death of the life tenant. Or where the statute taxing intangibles has been repealed the reverse may be the result.

*Matter of Dwight*, N. Y. L. J., October 8, 1911; aff. 149 App. Div. 912; 133 Supp. 1119.

*Matter of Meserole*, 98 Misc. 105; 162 Supp. 414.

*Matter of Webber*, 151 App. Div. 539; 136 Supp. 83.

*Matter of Atterbury*, N. Y. L. J., March 25, 1913.

*Matter of Agnew*, N. Y. L. J., December 13, 1913.

*Matter of Gibson*, N. Y. L. J., March 3, 1914.

*Matter of Russell*, N. Y. L. J., June 1, 1914.

*Matter of Curry*, N. Y. L. J., May 27, 1914.

On the other hand, where there is reserved a power of revocation the gift does not become complete until the date of the donor's death and the law as of that date applies.

*Matter of Bostwick*, 160 N. Y. 489; 55 N. E. 208.

*Matter of Dana*, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710.

*Matter of Dana*, 215 N. Y. 461; 109 N. E. 557.

*Matter of Hoyt*, 86 Misc. 696; 149 Supp. 91.

*Matter of Schermerhorn, William C.*, N. Y. L. J., June 26, 1913.

*Matter of Caswell*, N. Y. L. J., April 24, 1914.

*Matter of Ely*, 149 Supp. 90.

A rather pretty problem was presented for solution in *Matter of Hawes*, where a resident of Massachusetts made

a trust deed in 1864 reserving to himself the income for life and a power of appointment on his demise. The deed further provided that if he failed to exercise the power of appointment the property should be distributed under the intestate laws of Massachusetts. Part of the trust fund was subsequently invested in New York securities and the donor died prior to the New York amendment of 1911 which repealed the tax on such securities, without exercising the power of appointment he had reserved.

The heirs claimed that they took under the deed and that the Massachusetts statutes of distribution should be read into that deed, and that as it was executed in 1864, long prior to any inheritance tax statutes in either New York or Massachusetts, that their succession was exempt from tax. The New York county Surrogate so held; but he was reversed by the Appellate Division and this decision was affirmed without opinion by the Court of Appeals.

*Matter of Hawes*, 162 App. Div. 173; 147 Supp. 329; aff. 221 N. Y. 613.

It was held in *Matter of Masury*, 28 App. Div. 580; 51 Supp. 331, aff. 159 N. Y. 532; 53 N. E. 1127, that the reservation of a bare power to revoke where the income was paid to the donee was insufficient to prevent the vesting of title without some evidence that the donor intended to exercise it.

The *Masury* case was distinguished and confined to its particular facts in *Matter of Bostwick*, 160 N. Y. 489; 55 N. E. 208. The court said:

“I think that we may have gone too far in generally affirming the *Masury* decision; certainly the limit was then reached, beyond which the courts could not go without emasculating the provisions of the statute. We thought there were some reason in the facts of the *Masury* case for finding an intention in the donor to make an absolute transfer of property during his life, which the mere reservation of a power to revoke was of itself insufficient to negative. But, if the trust transfers now in question were

held to be without the operation of the act, too dangerous a latitude of action would be permitted to persons who desired to evade its provisions by some technical transfer, which would still leave the substantial rights of ownership in the donor.”

The later cases in New York follow the *Bostwick* case.

*Matter of Dana*, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710.

In *Welch v. Treasurer*, 217 Mass. 348; 104 N. E. 726, the donor died ten years prior to the statute. The deed was to trustees and was subject to a possible defeasance by the joint action of the trustees and the donor and his wife. The court held this possibility was insufficient to prevent the vesting of title. It said:

“The plain meaning of this language is that property whose title passed before the date when the statute took effect, is not affected by it. For determining whether this or the earlier laws should apply, a definite and practical date was provided—that of death where the property passes by will or under the intestate succession laws, and that of the deed when the title so passes. This section applies to the case at bar. Almost ten years before the statute became operative Mr. Loring irrevocably and completely conveyed away all his right and title in this property; and at that time, and by the same instrument, the life interest of the petitioners was vested in them, even though it was subject to possible defeasance by the joint act of the trustees, Mr. Loring, and, during her life, Mrs. Loring. As between the grantor and the trustees the conveyance was absolute, as he had no more power to revoke or alter the deed than he would have had if the so-called power of revocation had not been inserted therein.”

On the other hand, where there was a deed to trustees with life use reserved and power to appoint by will, the deed being made before the statute, and the deceased died

exercising the power of appointment reserved in the deed, held taxable. The court said:

“We see no difference in principle between property passing by a deed intended to take effect in possession or enjoyment on the death of the grantor and property passing by will. In either case it is the privilege of disposing of property after the death of the grantor or testator and of succeeding to it which is taxed, though the amount of the tax is determined by the value of the property. The constitutionality of the law in regard to taxing property passing by will was fully considered in *Minot v. Winthrop*, 162 Mass. 113; 38 N. E. 512, and that case, we think, is decisive of this.

“It is immaterial, it seems to us, in this case, as it would be in the case of a will, that the indentures were dated and executed before St. 1891, ch. 425, took effect. It is the vesting of the property in possession and enjoyment on the death of the grantor and after the statute took effect, that renders it liable to the tax, and both of those things happened in this case. (*In re Green* and *In re Seaman*, *ubi supra*.)

“The appellant has pointed out some difficulties that might arise in a supposable case, but it is enough to say that they do not exist in this case. No interest vested in this case either in possession or enjoyment in any of the legatees till after the death of the grantor; and that did not happen till after the passage of St. 1891, c. 425. It was held in *Cushing v. Aylwin*, 12 Metc. 169, that Rev. St., c. 62, § 3, applied to a will made before that law took effect, ‘when the will had not taken effect, before that time, by the death of the testator.’ We think that that case applies to this, and, if authority is needed, is sufficient to justify the conclusion to which we have come. It is true that in New York there is an express provision by which the statute is applicable whether the transfer was made before or after

the passage of the act. But we think that the conclusion arrived at in the cases in that State to which we have referred would have been the same without that provision.”

*Crocker v. Shaw*, 174 Mass. 266; 54 N. E. 549.

And this is the rule in other States.

*State v. Bullen*, 143 Wis. 512; 128 N. W. 109; aff. 240 U. S. 625.

*Re Line's Estate*, 155 Pa. St. 378; 26 A. 728.

*N. E. Trust Co. v. Abbott*, 205 Mass. 279; 91 N. E. 379.

In the *Abbott* case the court thus reviews the facts:

“The only part of the property which was finally disposed of in a known and definitely stated way was the income for the period of five years. The disposition of the principal was left subject to contingencies, any one of three of which might terminate the trust and give direction to the payment of the principal. The creator of the trust, six months before the expiration of the five years, could give notice of his intention to withdraw the principal, or the Trust Company could give notice of its intention to pay it off, in either of which cases the money would be returned to Marshall (the donor); or, if Marshall survived and no notice was given, another period of five years would begin under the same arrangement; or if Marshall died before the expiration of the first period and no notice had been given, the trust would be terminated and the principal paid off to Miss Abbott at the end of sixty days from the expiration of the period.

“She had a vested interest in the income until the termination of the trust. The arrangement in regard to the principal was very different. Her only interest in that was contingent, and she was not to enter into the possession and enjoyment of it, in any event, until after the death of Marshall, and then only if the trust had not been terminated by either party by giving notice in his lifetime.

“The question under the statute is whether this gift of

the property was 'made or intended to take effect in possession or enjoyment after the death of the grantor.' We think it plain that it was. Miss Abbott could have no possession or enjoyment of the principal until after his death. The fact that she had the possession and enjoyment of the income in his lifetime makes no difference. In that respect the case is the same as if this income had been given to another person, with the disposition of the principal that appears in the agreement."

So, where a right was reserved "to alter, change, modify or revoke all disposition and direction as to transfer and dispositions made and to be made of said property." Held taxable.

*Line's Estate*, 155 Pa. St. 378; 26 A. 728.

### C.— CONSIDERATION AS AFFECTING TESTAMENTARY TRANSFERS.

"Transfers by deed, grant, bargain, sale or gift, made in contemplation of death, or intended to take effect in possession or enjoyment at or after death." Such is the language of substantially all the statutes and of the Federal act. Some of the statutes except transfers made on "adequate" consideration or "*bona fide* consideration in money or money's worth."

Are such transfers taxable when made on consideration, without reference to its adequacy?

The problem is common to all jurisdictions where inheritance taxes are levied.

In the early cases the courts were inclined to the doctrine that the words "deed, grant, bargain sale" meant nothing or meant transfers in those forms which were in fact gifts.

"The word 'sale' includes only such transactions which though in form 'sales' are in fact gifts."

*Hagerty v. State*, 55 Ohio St. 613; 45 N. E. 1046.



“The words refer to transfers without consideration which become operative only by way of gift.”

*Blair v. Herold*, 150 Fed. 199; aff. 158 Fed. 804.

“It is very evident that the word ‘deed’ as used in this act has no reference to a conveyance of property by such an instrument made in the ordinary course of business for a valid consideration, but is confined, to conveyances of real property, intended as gifts.”

*Matter of Birdsall*, 22 Misc. 180; 49 Supp. 450; aff. 43 App. Div. 624; 60 Supp. 1133.

“I do not consider that the statute has reference to transfers made upon a valuable consideration, for the tax is not one upon payment, but upon the right of succession. The payment of an obligation dependent upon valuable consideration is not a succession in any sense.”

*Matter of Miller*, 77 App. Div. 473; 78 Supp. 930.

“If a person, fully realizing that his death is to occur within a few hours, should convey by deed real estate and receive the full consideration therefor, it would not be claimed that the real estate so conveyed would be subject to the tax in question, notwithstanding the conveyance was clearly made in contemplation of death.”

*Matter of Spaulding*, 49 App. Div. 541; 63 Supp. 694; aff. 163 N. Y. 607; 57 N. E. 1124.

“The transfer related to in this subdivision is a gratuitous transfer; in other words, a gift.”

*Matter of Escoriaza*, N. Y. L. J., Nov. 15, 1914.

The trend of the authorities, however, has been to a broader construction of the statute. They now divide such transfers into three classes:

1. When the transaction is completed *inter vivos* though payment is postponed until death;
2. Where the contract is executory;

### 3. When the consideration is inadequate.

The first class of transfers are not taxable; the second and third are.

### 1. Where the Transaction is Completed *Inter Vivos*.

In the *Matter of Thorne*, 44 App. Div. 8; 60 Supp. 419, appeal dismissed 162 N. Y. 238, there was a completed transfer of \$100,000 of stock in the American Press Association upon the consideration that the donee would support the donor during life. "It amounted to the purchase of an annuity," said the court.

In the *Matter of Edgerton*, 35 App. Div. 125; 54 Supp. 700; aff. 158 N. Y. 671; 52 N. E. 1124, there was a completed transfer of a large property to nieces and nephews upon a consideration of bonds binding them to support the donor during life. This was held a completed transfer *inter vivos* and also amounted to an annuity.

In the *Matter of Hess*, 110 App. Div. 476; 96 Supp. 990; aff. 187 N. Y. 554; 80 N. E. 1111, there was a deed of land reserving the right to dwell thereon during life upon consideration of an agreement to support the grantee. Here again appears the theory of an annuity.

To the same effect are:

*Matter of Daniell*, 40 Misc. 29.

*Matter of Hulse*, 15 Supp. 770.

*Matter of Burhans*, 100 Misc. 646, 166 Supp. 1027.

In an ante-nuptial contract the grantor, in consideration of marriage, deeded the property in trust, reserving a life income and remainder to his widow or his son, if any. The contract was made *prior to the statute*. The remainders being thus vested, the transaction was held completed *inter vivos* and not taxable.

*Matter of Craig*, 181 N. Y. 551; 74 N. E. 1116.

Where the decedent conveyed a farm to his nephew for a

good consideration, and where the deed was never placed on record until after the grantor's death, the transfer is not subject to an inheritance tax in the absence of evidence of intent to evade.

*In re McCormick*, 15 Pa. Co. Ct. 621.

As we have seen, the later authorities hold a trust deed reserving a life estate, where made after the statute, taxable.

*Matter of Keeney*, 194 N. Y. 281; 87 N. E. 428; aff. 222 U. S. 525.

The principle is well illustrated by a recent case in Illinois:

On the death of William J. Orendorff intestate his widow and his three sons agreed to divide his property not according to the statutes of distribution, but by giving the widow a life estate in the whole property and on her death the remainder to the three sons. This was held not a contract to take effect at death, but an agreement complete *inter vivos* on valid consideration. On the death of the widow the remainder interest in the three sons was held not subject to an inheritance tax. The court said, at page 254:

“In view of the interest the law gave her in her husband's estate there was ample consideration for William J. Orendorff's widow, Mary Orendorff, to sell all the interest in the remainder of said shares of stock for the life interest that was given her by said agreement. Without question Mary Orendorff and her sons, after her husband's death, could by agreement, acting together, dispose of all his property in any way they saw fit. An absolute transfer or gift of property left by William J. Orendorff, made in good faith, for a valuable consideration, at the time this agreement was made, or at any time before her death, would not be subject to an inheritance tax at the death of Mary Orendorff as part of her estate.”

*Pope v. Orendorff*, 262 Ill. 246; 104 N. E. 656.

A similar case arose in New York with a similar result.

*Matter of Polhemus*, 84 Misc. 332; 145 Supp. 1107.

The leading case in New York presents some difficulties and is apt to mislead if not carefully analyzed, and it has frequently been distinguished. In the *Matter of Baker*, 83 App. Div. 530; 82 Supp. 390; aff. 178 N. Y. 575, one Henry B. Baker, being about to marry, entered into an ante-nuptial contract with his prospective wife whereby he agreed, in consideration of the contemplated marriage, to presently give her the sum of \$1,000, and if the marriage were consummated and his wife outlived him, that he would provide by will for the payment of \$20,000 to her out of his estate. The wife on her part agreed to accept this provision in lieu of her dower rights in her husband's property. Baker died intestate, leaving his widow and a sister who was his next of kin and only heir at law, and by agreement between them the \$20,000 was paid to the widow out of the estate. The question was whether this sum was taxable, and it was held that it was not because the agreement that the wife should be paid out of the estate created a debt payable out of the husband's estate after his death.

In *Logan v. Whitley*, 129 App. Div. 666; 114 Supp. 255, there was an ante-nuptial contract precisely similar to that in the *Baker* case. The amount to be paid was \$10,000. The husband shot and killed his wife and then committed suicide. A complaint in a suit by the wife's next of kin was sustained by the Appellate Division on the theory that it was in the nature of a debt against the estate which was good and valid, although the wife did not survive her husband by reason of his own wrongful act. In other words, the court held that it was not a claim which took effect in possession and enjoyment after the husband's death because the wife never in fact became his widow.

## 2. Where the Contract is Executory.

A distinction, however, arises, where the contract is executory even though full and valid consideration be paid.

*Matter of Kidd*, 188 N. Y. 274; 80 N. E. 924.

George W. Kidd, being about to marry a widow, entered into an ante-nuptial contract with her whereby, in consideration of the marriage, and the promise of his expectant wife to turn over to him the sum of \$40,000, he agreed that he would adopt Grace C. Slocum, her daughter, give her his name and make her his heir, and if there should be no issue of the marriage (as there was not) that he would devise and bequeath all of his property to said Grace C. Slocum. The mother fulfilled her part of the agreement, but Kidd failed to fulfill his part, leaving at his death a will whereby he disposed of his property otherwise than as he had agreed. Grace C. Slocum (then named Dickinson) sued to establish Kidd's contract for her benefit, and succeeded in obtaining a judgment that she was entitled to his whole estate. The question was whether the property thus recovered was subject to a transfer tax. It was held that it was. It was pointed out in the opinion that no present interest in the estate vested in Miss Slocum by virtue of Kidd's agreement with her mother. All that Kidd agreed to do was to leave her whatever he might have when he died, but in the meantime, while he could not have conveyed away his property in fraud of her rights, he might have entirely consumed it in living expenses or have lost it in speculation.

This case overrules *Matter of Demers*, 41 Misc. 470; 84 Supp. 1109.

These principles were applied and the distinction between the *Baker* and *Kidd* cases emphasized in

*Matter of Cory*, 177 App. Div. 871; 164 Supp. 956; aff. 221 N. Y. 612.

Here two brothers, long associated in business as co-

partners, incorporated their business and issued stock worth \$200 a share, each brother having 500 shares or an interest worth \$100,000. They agreed that the survivor might buy of the estate of the decedent the \$100,000 interest for \$60 per share or \$30,000. The deceased brother, Charles, ratified the agreement by will. The surviving brother, John, claimed that he should be taxed on a transfer of \$30,000 and not of \$100,000, and the Surrogate so held. In the course of its opinion reversing this decision the Appellate Division said:

“The statute imposed a tax upon the ‘transfer by deed, grant, bargain, sale or gift \* \* \* intended to take effect in possession or enjoyment at or after death.’ The transfer of the stock of John M. Cory falls exactly within the terms of the act. There was not a present sale of the stock from Charles Cory to his brother, but merely a contract that after Charles Cory’s death John M. Cory might purchase the stock at an agreed price. We are of the opinion that the mutuality of obligation assumed by the brothers furnished a sufficient consideration for their mutual agreement; but, even so, the agreement constituted merely a mutual bargain for the sale of the stock after the death of whichever brother should first die, and under which the transfer of ownership could not take effect either in possession or enjoyment until after death. In fact, so long as Charles Cory lived he could at any time have sold or otherwise parted with the stock as he chose, without violating his agreement with his brother, which in terms applied only to the stock owned by the brother first dying ‘at the time of his decease.’ Until one of the brothers died the contract remained wholly executory, and after death the only right given to the survivor was that he might buy the stock from the estate of the decedent, paying therefor sixty dollars per share.”

Two days after the *Cory* case had been affirmed without

opinion by the Court of Appeals, July 14, 1917, the Appellate Division, First Department, handed down a decision in *Matter of Orvis* reversing the New York county Surrogate, who had held that where two partners entered into an agreement that the survivor should take two funds aggregating \$1,000,000 there was no tax, as the agreement was upon consideration and did not come within the terms of the statute. This went a step beyond the *Cory* case. Two justices wrote dissenting opinions (Shearn and Page) and Justices Smith and Dowling concurred with Scott, P. J.

This is a pioneer case and of wide application, and the opinions both in the Appellate Division and Court of Appeals establish the doctrine that any agreement donative in character, even though based upon consideration, is subject to the tax when taking effect at or after death. The facts are stated at length in the Appellate Division opinion, which is reported at 173 App. Div. 1; 166 Supp. 126. It is in full as follows:

“SCOTT, J. The sole question involved in this appeal is as to the taxability of two certain funds established by the deceased, Charles E. Orvis, and his brother and partner in business Edwin W. Orvis.

“These two brothers had been members of the copartnership of Orvis Bros. and Co., and on January 2, 1911, made a mutual agreement in the following form:

“‘Whereas, It is the desire of Charles E. Orvis and Edwin W. Orvis, founders of the firm of Orvis Brothers and Co., to provide for the continuation of the said firm, by the survivor, in event of the death of either of them.

“‘Now therefore it is hereby mutually agreed by and between said Charles E. Orvis and Edwin W. Orvis, that the sum of five hundred thousand dollars shall be drawn from the profits and accumulations of the said firm, heretofore accrued, and shall be placed to the credit of Foundation Account, and that such account shall be owned equally

(half and half) by said Charles E. Orvis and Edwin W. Orvis, and it is hereby expressly and distinctly agreed by and between the parties hereto, that in the event of the decease of either of them, the survivor of them shall be the sole owner of the Foundation Account, and the heirs of the one deceased shall have no right, title, interest or claim thereto. And it is hereby further agreed that to provide against any impairment of the said Foundation Account, an equal amount of five hundred thousand dollars shall be placed to the credit of Contingent Account, and it is expressly and distinctly agreed by the parties hereto that the terms of this agreement, in relation to the said Contingent Account shall in every respect be exactly the same as the terms in regard to the Foundation Account, as hereinbefore stated.

“ ‘In witness whereof we have signed, sealed and delivered this agreement on the second day of January, 1911,’

“The two funds provided for by this agreement were set up and were continued until the death of Charles E. Orvis, by which time the so-called Foundation Account had been impaired to the extent of \$134,000, the Contingent Account remaining intact.

“As will be seen from a reading of the agreement, one-half of each fund was owned by Charles E. Orvis until at his death it passed by virtue of the agreement to his brother Edwin. The question is whether or not a tax should be levied upon this transfer or devolution of ownership. The learned Surrogate held that it should not, because the agreement under which the devolution or transfer was to take place, rested on what he termed a valuable consideration, such consideration being found in the mutuality of the agreement whereby the brothers reciprocally agreed that the survivor of them should take the interest in the business belonging to him who died first.

“That this does furnish a sufficient consideration to sup-



port the agreement as between themselves I do not question, but I do not consider that that fact alone establishes the non-taxability of the transfer. Mutual promises may furnish a sufficient consideration for a promise to convey in the future, but if there be no other consideration the conveyance when it takes place is, in effect, a voluntary one.

“Section 220 of the Tax Law imposes a tax upon a transfer by ‘grant, sale or gift—intended to take effect in possession or enjoyment at or after such death,’ i. e., that of the grantor, vendor or donor.

“This language seems to fit exactly the present case. Whether the transaction be considered a sale or a gift, it was clearly intended to take effect only on the death of the vendor or donor, and not then unless the vendee or donee should outlive the vendor or donor.

“Each copartner retained the sole ownership of one-half of the moneys going to make up the two funds, just as he had before the funds were set up, for it is specifically provided that ‘such amount shall be owned equally (half and half) by said Charles E. Orvis and Edwin W. Orvis.’

“The effect of the transaction is precisely as it would have been if each brother had made a will leaving to the other his interest in the accumulated and funded profits, providing such brother survived. In such case no one would doubt that the transfer was taxable.

“Under the terms of the agreement each brother retained the sole ownership of his share of the two funds and was entitled to the profits arising from the use thereof. The only limitation upon his ownership was that he could not freely dispose of the funds after death, if he happened to pre-decease his brother. All the elements were present that have led to the taxation of property conveyed by trust deeds under which the creator of the trust has retained the beneficial title of the property during life, and has disposed of the remainder after death. (*Matter of Green*, 153 N. Y.

223; 47 N. E. 292; *Matter of Brandreth*, 169 N. Y. 473; 62 N. E. 563; *Matter of Cornell*, 170 N. Y. 423; 63 N. E. 445; *Matter of Keeney*, 194 N. Y. 581; 87 N. E. 428.) In fact the agreement was essentially testamentary in character, and is therefore subject to the transfer tax law. (*Matter of Dana*, 164 App. Div. 45; 149 Supp. 417; aff'd 214 N. Y. 710.)

"I am unable to distinguish the present case in principle from *Matter of Kidd*, 178 N. Y. 274. In that case the testator had made a valid *ante mortem* agreement to leave his property by will to his wife's daughter. He attempted to leave it otherwise, but the agreement was upheld and the daughter's right to receive his property, at his death was sustained, but it was held that the transfer was taxable. That case and this are clearly distinguishable from those in which the transfer at death is to be made in payment of an antecedent debt, as in *Matter of Baker*, 83 App. Div. 530; 77 Supp. 170; aff'd 178 N. Y. 575, or in those in which there had been an actual completed sale during life by title passed, although possession was to be postponed until death of grantor or vendor. Nothing of the sort appears in the present case. Charles E. Orvis distinctly did not confer title upon his brother during his own life, for it is expressly agreed that he should continue to own half of the two funds, and whatever consideration there was for his promise that the brother should take the whole fund at death, was but a reciprocal promise *in futuro* by the brothers and in no sense a present, valuable consideration which created a debt.

"In my opinion the order should be reversed with costs and disbursements to the appellant, and the matter remitted to the Surrogates' Court for entry of an order imposing the proper tax upon the transfer in question.

"Dowling and Smith, JJ., concur."

In the Court of Appeals the *Orvis* case was unanimously affirmed. The opinion is by Collin, J., and is reported in

223 N. Y. 1; 119 N. E. 88, where the court says: " The Legislature did not intend that a purchaser who had paid full value for the property transferred should directly or indirectly pay the tax besides. \* \* \* It was intended to tax all transfers which are accomplished by will, the intestate laws of the State and those made or incepted prior to the death of the transferor in contemplation of or intended to take effect in possession or enjoyment after his death which are in their nature or character instruments or sources of bounty or benefaction and which can be classed as similar in nature or effect with transfers by wills or the intestate laws because they accomplish transfers of property donative in effect under circumstances which impress on it the characteristics of a disposition made at the time of the transferor's death. \* \* \* The taxability does not depend upon fraud or an attempt to evade the statute nor does it depend upon the purpose or inducement for the transfer, nor does it depend upon the form given the transfer; if in truth it in effect bestows under statutory conditions a bounty or benefaction and is not a transfer for money's worth, it is taxable."

In *Matter of Keeney*, 194 N. Y. 281; 87 N. E. 428; aff. 222 U. S. 525, the transaction was by a deed of trust executed four years before decedent's death; she conveyed certain bonds and stock in trust, the income to be paid, one-fourth to her during her life and three-fourths to her children; and after her death to continue to pay the income or pay the principal to the children or their issue. A tax upon the one-fourth interest of which the decedent had the income for life was sustained as a transfer to take effect at death. The opinion does not show what the consideration was for the agreement, but being under seal consideration is presumed. Judge Cullen used this language in speaking of the statute: "It may also be observed that if the statute is

to be considered as applicable only to voluntary gifts, *as to which we express no opinion, etc.*”

In *Matter of Dana*, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710, it appeared that the decedent was a stockholder and the president of William B. Dana Company, and five years before his death he surrendered the certificate for his shares and had a new certificate issued to him for 620 shares, which certificate read “*William B. Dana and Jacob Seibert, Jr., and the survivor.*” This certificate he delivered to Seibert, at the same time executing and delivering to him also an instrument in writing whereby he appointed Seibert trustee of such shares of stock, reserving to himself the income derived from the stock and the right to revoke the trust and retake the stock at any time; he also reserved the right to appoint a new trustee and to dictate how the stock should be voted. The court imposed a tax upon the transfer as a transfer to take effect at death. Some evidence was given showing that the inducing cause of the gift was services which Seibert had rendered to the William B. Dana Company in the past and might be induced to render in the future. But the fact of consideration did not alter the result.

The cases tending to support the view here presented are :

*Matter of Green*, 153 N. Y. 223; 47 N. E. 292.

*Matter of Bostwick*, 160 N. Y. 489; 55 N. E. 208.

*Matter of Brandreth*, 169 N. Y. 437; 62 N. E. 563.

*Matter of Cornell*, 170 N. Y. 423; 63 N. E. 445.

*Matter of Keeney*, 194 N. Y. 281; 87 N. E. 428.

*Matter of Skinner*, 45 Misc. 559.

*Matter of Dobson*, 73 Misc. 470; 132 Supp. 472.

*Matter of Burgheimer*, 91 Misc. 468; 154 Supp. 943.

*Matter of Cruger*, 54 App. Div. 405; 66 Supp. 636; aff. 166 N. Y. 602; 59 N. E. 1121.

*Matter of Dana*, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710.

*Appeal of Waugh*, 78 Pa. St. 436.

While some of these agreements were voluntary, several

were upon consideration, and nearly all the others were *under seal importing consideration*.

They were all *bargains* to take effect in possession or enjoyment at or after death, and were held taxable under the statute.

In addition to the authorities already reviewed there are several instances where a tax has been imposed upon transfers by agreement very similar to the one in the *Cory* case (*supra*).

In *Matter of Burgheimer*, 91 Misc. 468; 154 Supp. 943, the decedent agreed with his brother and copartner that on the death of either the survivor should take the good will of the firm. Neither brother had any interest in the other's share of the good will until after death. There were also mutual wills carrying the agreement into effect. Surrogate Fowler held the interest in the good will owned by the deceased brother taxable.

In *Matter of Hellman*, 172 Supp. 671; aff. 226 N. Y. mem., there was a copartnership agreement that on the death of any partner his interest in the good will passed to the survivor without consideration. The appraiser found that the interest of the deceased in the good will was worth \$131,417.12, and half of that amount was taxed as a transfer to each of the two surviving partners. The order was affirmed both by the Appellate Division and Court of Appeals without opinion.

In the *Matter of Halle*, 103 Misc. 661, 170 N. Y. Supp. 898, the facts were that there were written articles of copartnership which provided as follows:

“For the purpose of determining the interest of any member of the firm in the firm's assets in the event of death, a dissolution of the partnership or any other event, the good will of the business of the copartnership hereby formed shall be deemed to be of no value.”

After reviewing the *Cory* and *Orvis* cases the court said:

“It would seem, therefore, that the agreement of the decedent and his partner to the effect that upon the death of either his interest in the good will of the business should be deemed to be of no value, does not prevent the State of New York from ascertaining whether such good will had a market value and from assessing a tax upon the value so ascertained against the surviving partners or the other persons who were the beneficiaries thereof.”

In the *Matter of Heyman Cohen*, 170 N. Y. Supp. 156, there was an agreement that in the event of a dissolution of a firm by the death of any partner or by voluntary agreement, no value was to be placed upon the good will, and the court says:

“The evidence shows that the business had a good will, and the value of the decedent’s interest in this good will is taxable, irrespective of any agreement which he may have made with the other partners as to the right of the surviving partners to the good will.”

In *Matter of Skinner*, 45 Misc. 559; 92 Supp. 972, Surrogate Silkman in Westchester county held that where the decedent five months before his death transferred by deed all of his real and personal property amounting to more than \$100,000 to his secretary “*in consideration* of services heretofore rendered me and to be rendered as my private secretary and business manager,” such transfer was taxable. The opinion does not show whether there was any proof taken as to the services which the secretary had or did render under this contract, nor was such proof necessary, for the transfer was by a deed under seal, so that there was a presumption of consideration which could only be rebutted on the ground of fraud.

In *Matter of Dobson*, 73 Misc. 170; 132 Supp. 472, Surrogate Sexton of Oneida county held that a transfer was taxable where the decedent deeded to her cousin with whom she was living \$80,000 of real property, *in consideration*

that the cousin should execute a lease to the grantor for her lifetime, and which lease was executed the same day. A tax was imposed, the Surrogate saying that it was not a *bona fide* sale for a valuable consideration, but a gift by deed of \$80,000 worth of real property for such companionship and care as she might feel equal to.

The United States statute of 1864 covers an advance made by a father to his son, as it is a gift made without valuable or adequate consideration. The fact that the son was named in his father's will does not give him any vested or contingent estate but is a bare possibility not assignable and can therefore not be made the basis for a consideration.

*United States v. Banks*, 17 Fed. 322.

Long prior to the death of the testator he advanced to the beneficiaries on account of their legacy at different times sums which aggregated \$4,000 and took from them their bonds in corresponding amounts conditioned for the payment during his life of an annuity or yearly sum equal to the interest at 6% on the advancements. The court holds that this was really a device to evade the tax and its meaning that the testator should receive a life income from his legacy and that full enjoyment of the principal should be had by the legatee only after the testator's death.

*In re Conwell*, 5 Pa. Co. Ct. 368.

### 3. The Consideration must be Adequate.

Even in the absence of a specific provision in the statute so providing the courts now incline to the view that the consideration for a transfer taking effect at death must be adequate in order to escape the tax.

“In all cases in which the value of the consideration for the property transferred under the statutory conditions is so disproportionately less than the value of the property transferred that the transfer is, in the light of reason, or

ordinary intelligence and judgment, beneficent and donative, the transfer is taxable."

The principle received recent illustration in *Matter of Van Cott*, 180 App. Div. 814; 168 Supp. 95, where there was a transfer of a copartnership interest by a father to his son. The court said:

"The Tax Law imposed a tax upon transfers, not only by will, but 'by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.' (Section 220, subd. 4.) Under the agreement the father retained the ownership of the property and a stipulated return therefrom during his life, and in case of the dissolution of the partnership by mutual consent, or by the death of the son, he was to receive in cash the full value of his interest of \$22,212.90. The agreement also provided that the transfer by the father was of 'all the right, title, and interest said first party may own at the time of his death, or at the time of the dissolution of the partnership, in and to said firm business, property, or assets.' This was not a present transfer of all his interest, but was to take effect in the future upon the death of the father or the dissolution of the partnership. Upon the father's death the son became entitled to the property absolutely without the payment of its value, although obligated to make certain payments to his mother during her lifetime. It was plainly the intention of the agreement that neither the son nor the mother should have any rights in the ownership of the property until after the father's death, when the grant was intended to take effect in enjoyment. 'Since they could not receive any part of the principal or the income till after her death, their right of enjoyment was postponed till the happening of that event. Whatever interest they may have had before, the right to possession and enjoyment depended



upon the death of the donor. (*Matter of Green*, 153 N. Y. 223, 227; 47 N. E. 292, 293.)

“While there was a valuable consideration for the lease, the transfer of the corpus upon the death of the father was without consideration. The agreement was testamentary in character. The will, executed the same day, supplemented the agreement. It disposed of all his other property. As was said in *Matter of Dana*, 215 N. Y. 461, 465; 109 N. E. 557, 559: ‘In the present case, however, the trust instrument took effect precisely as would a will bequeathing the stock which it conveyed; and the fact that the testator thus withdrew a portion of his property from the operation of his will does not prevent that portion from being a part of a transfer to the same parties, taking effect upon his death, to be combined with their legacies under the will.’ To this effect are also *Matter of Bostwick*, 160 N. Y. 489; 55 N. E. 208; *Matter of Cornell*, 170 N. Y. 423; 63 N. E. 445.

“The time when the tax accrues — that is, when the transfers take effect — would seem to be the test whether transfers made by different methods or instruments should be taxed separately or combined. (*Matter of Hodges*, 215 N. Y. 447; 109 N. E. 559.) Under this rule, I think the entire transfer should be treated as a whole, and only one exemption of \$5,000 to each, the widow and son, allowed.”

One-fourth of the inheritance tax statutes now provide that a transfer taking effect at death must be upon adequate consideration to escape the tax, and several of them add that the consideration must be in money or money's worth. The statutes of California, Colorado, Delaware, Georgia, Kansas, Maine, Massachusetts, Nevada, Rhode Island, Vermont, Wisconsin and the Federal act so provide; but in the States where there is no specific provision to the effect the rule of the *Orvis* case will probably prevail, as these provisions would seem to be declaratory of the interpretation to be placed upon the language common to all the

statutes. This is the trend of the authorities construing the provisions as to adequate consideration.

In the *Estate of Reynolds*, 169 Cal. 600; 147 Pac. 268, the court held that the amendment served to clarify but not to change the pre-existing law and applied it to a case arising *prior* to the amendment. A father suffering from a mortal disease transferred his department store, valued at \$100,000, upon consideration that his son should assume the debts amounting to \$30,000 and pay the father \$600 a month during life. The court said:

“If it can be said that there was any element of valuable consideration received back by the father for his transfer to the son, it was certainly not adequate from any commercial point of view. He was in failing health at the time the gift was made. It was known, and he knew, that his tumor had returned and that the days of his life were numbered, and the agreement to assume an indebtedness of \$30,000 in consideration of a gift in value exceeding \$100,000, and the further agreement to pay \$600 a month during the donor’s life (which agreement itself does not seem to have been observed), certainly do not measure up to the requirements of the law of a valuable and adequate consideration. Indeed, it seems to be quite plain that, as in the case of the widow, so in the case of the son, the father in contemplation of death was transferring by gift instead of devise the valuable business which he owned and had theretofore conducted.”

Since the *Reynolds* case the California courts have had the question up in several proceedings, and have adhered to the rule that the consideration must be adequate to escape the tax where the transfer takes effect at death.

Where the agreement was to pay the dividends to the transferor on part of the stock transferred, it was held a

valuable but not an adequate consideration, and therefore the transfer was taxed.

*Felton's Estate*, 169 Pac. 392.

Where the consideration expressed in the deed was \$10, and the land was shown to be worth over \$550, and there was no proof of consideration other than that expressed in the deed, the transfer was held taxable.

*Abstract Title and Guarantee Co. v. State*, 173 Cal. 691, 161 Pac. 264.

A similar amendment to the Massachusetts statute has received a similar construction :

A widow advanced in years and in feeble health desired to secure during life the services and companionship of a certain man, fifty-four years of age, who was employed as a traveling salesman at a salary of \$2,200 a year in addition to his traveling expenses. In consideration of his resigning this position and removing with his wife to the widow's residence, where they continued to live and to care for her until her death, the widow deposited with a trustee \$100,000, face value, of 3½% bonds of the Commonwealth of Massachusetts, with a declaration of trust directing the trustee to pay the income during her life in equal shares to the man and his wife, and upon her death to transfer the bonds to them in equal shares absolutely if they both survived her, or, in case, at the time of the settlor's death, either of the beneficiaries should be dead, to transfer the whole of the bonds to the survivor, or, in case the settlor should survive both the beneficiaries, then at her death to transfer one-half of the bonds as one of the beneficiaries should have appointed by his will and the other half as the other beneficiary should have appointed by her will, or in default of appointment by either of them, to his or her next of kin. At the time of the settlor's death the bonds had an actual market value of not less than \$90,000. Upon a bill in equity by the trustee for instructions, it was held that the transfer of the

bonds under the deed of trust did not constitute "a *bona fide* purchase for full consideration in money or money's worth" within the exception contained in St. 1909, c. 490, Part IV 1, and consequently that the transfer was subject to a succession tax under that statute.

*State Street Trust Co. v. Treasurer*, 209 Mass. 373; 95 N. E. 851.

#### 4. Burden of Proof.

A recent case in California holds that the burden of proof is on the Comptroller to show want of consideration.

"The act in question does not impose a tax generally upon transfers made in contemplation of death or intended to take effect in enjoyment after death. It imposes a tax only upon such transfers when made 'without valuable and adequate consideration.' The absence of the consideration is just as essential to the obligation to pay the tax as the contemplation of death or the intention of the transferrer that the possession or enjoyment shall be postponed until death."

*McDougald v. Boyd*, 172 Cal. 753, 757; 159 Pac. 168.

Though the California statute was amended in 1917 with this decision in view, the courts of that State still hold that the burden of proof is on the State officials to prove that the consideration was not valuable or that it was inadequate.

*Nickel v. State* (Cal.), 175 Pac. 641.

This would seem to make the task of the State's taxing officers a difficult one and to open the door for litigation. There is some doubt as to the rule in New York. Where the question arose over the taxation of a joint account the court said in a recent case: "The record does not disclose who furnished the money which was deposited to the joint credit. Nothing indicates that the succession in this case was not donative in character (*Matter of Orvis*, 223 N. Y. 1, 7), and we may well reserve consideration of the application of the

statute to a case where the survivor had previously acquired his interest for value.”

*Matter of Dolbeer*, 226 N. Y. mem.

It would therefore appear that there was no presumption in favor of the estate that there had been a transfer for value and that the burden was on the executor rather than on the Comptroller to show that property, once shown to have belonged to a decedent, had passed out of the estate for valuable and adequate consideration.

#### D.—LIFE INSURANCE.

Life insurance is not a contract taking effect at death within the meaning of the inheritance tax statutes. The widespread attention called to this statement in the first edition of this book justifies a more extended consideration of the whole subject. The State doubtless has power to tax policies of life insurance, but it has not been the policy to do so in this country. In any event such a tax, if imposed, would not be an inheritance tax, for the beneficiary under a life insurance policy does not succeed to its proceeds either by will or by intestate law, nor is the contract of insurance testamentary in its character.

The new Federal estate tax of February 24, 1919, undertakes to impose a tax upon the transfer, as *part of the estate*, upon all amounts received by beneficiaries under policies in excess of \$40,000. This is a new departure in inheritance taxation and its constitutionality may be doubted. It would seem clear under all the authorities above cited that the transfer under a policy of life insurance is not an inheritance, that the fund derived therefrom never becomes a part of the estate, and the right of the Government to tax such a transfer as part of the estate is extremely doubtful.

## 1. Nature of the Contract.

“The contract of life insurance is a mutual agreement by which one party undertakes to pay a given sum upon the happening of a particular event contingent upon the duration of human life in consideration of the payment of a smaller sum immediately or in periodical payments.”

25 Cyc., page 698.

*State v. Merchants' Exchange*, M. B. S., 72 Mo. 146, 159.

*Campbell v. Supreme Conclave, I. O. H.*, 66 N. J. L., 274; 49 A. 550.

*Nye v. Grand Lodge, A. O. U. W.*, 9 Ind. App. 131; 36 N. E. 429.

*Columbia Bank v. Equitable L. As.*, 79 App. Div. 601; 80 Supp. 428.

*Ritter v. Mutual L. I. C.*, 169 U. S. 139; 18 S. Ct. Rep. 300.

“A policy of life insurance is an inchoate or incomplete gift from the assured to the beneficiary and so may be changed at any time, in the absence of a contract to the contrary.”

*Union Mutual L. I. Co. v. Stevens*, 19 Fed. 671.

While a life policy, during the life of the assured, has many of the characteristics of property, being assignable and in a sense collateral security for money borrowed, it is not property, and the assured is not called upon to declare it as such to the assessors.

*Matter of Knoedler*, 140 N. Y. 377; 35 N. E. 601.

As the payment of the premium is an obligation of the assured it is an expense within the meaning of the income tax law, and the Federal authorities have ruled that it is not a deduction.

*Corporation Trust Co.'s Income Tax Service No. 2211.*

## 2. No Title to Fund in Assured.

As a policy of life insurance is merely an incomplete cause of action the holder of such a policy has no title to the fund set aside by the insuring company for its payment. This was demonstrated by a well-reasoned case in Maine.

“Are the premiums paid as the consideration for the contract of life insurance personal property placed in the hands of the insurance company as an accumulating fund for the future benefit of heirs or other persons, within the meaning of the statute? We think not. The premiums are paid absolutely to the corporation as the consideration for the policy of insurance. They, with their accumulations, are not to be paid to the heirs or other persons at some future day; but the sum to be paid by the special contract on the happening of the death of the insured is fixed and absolute, having no regard to the amount of premiums paid or their accumulations. \* \* \* The contract of life insurance is not a deposit of the premiums to be paid to some person with their accumulations at some future time, but a special contract of hazard for the payment of a sum stipulated without regard to the amount paid in premiums before the happening of the contingency.”

### 3. The Insurance Company Pays the Taxes.

#### a. STATE TAXES.

Conversely, while the insured does not have any title to the fund out of which his policy is ultimately to be paid, and therefore is not liable to pay any taxes upon his policy during its life, the insuring corporation has the title to the fund held by it as a reserve to meet policies as they accrue, and this fund is liable to taxation.

*State v. Parker*, 34 N. J. L. 479.

The contingent liability of such an insurance company before loss is not such an indebtedness as may be deducted from the credits of the company subject to taxation.

*Life Assn. v. Hill*, 51 Kan. 636; 33 Pac. 300.

*Kenton Ins. Co. v. Covington*, 86 Ky. 213.

It is not a trust fund but one to which the company has absolute title as part of its assets.

*Provident Trust Co. v. Durham*, 212 Pa. St. 68, 75; 61 A. 636.

A fund sufficient to reinsure all outstanding risks is the property of the company and subject to taxation.

*People ex rel. Feitner*, 166 N. Y. 129; 59 N. E. 731.

## b. FEDERAL TAXES.

The Federal Government has, however, for the first time in the history of transfer tax legislation, undertaken to tax the beneficiary of a life insurance policy to any amount received under such policy in excess of the sum of \$40,000. The provision of the new Federal act of February 24, 1919, is as follows:

“To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.” See Treasury Department Regulations, *post*, p. 610.

The act also imposes a tax on all outstanding policies of insurance, but these are paid by the insurer or the broker and not by the insured. The act is as follows:

## “INSURANCE.

“SEC. 503. That from and after April 1, 1919, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 504 of the Revenue Act of 1917, the following taxes on the issuance of insurance policies, including, in the case of policies issued outside the United States (except those taxable under subdivision 15 of Schedule A of Title XI), their delivery within the United States by any agent or broker, whether acting for the insurer or the insured; such taxes to be paid by the insurer, or by such agent or broker:



“(a) Life insurance: A tax equivalent to 8 cents on each \$100 or fractional part thereof of the amount for which any life is insured under any policy of insurance, or other instrument, by whatever name the same is called: *Provided*, That on all policies for life insurance only by which a life is insured not in excess of \$500, issued on the industrial or weekly or monthly payment plan of insurance, the tax shall be 40 per centum of the amount of the first weekly premium or 20 per centum of the amount of the first monthly premium, as the case may be: *Provided further*, That on policies of group life insurance, covering groups of not less than 25 lives in the employ of the same person, for the benefit of persons other than the employer, the tax shall be equivalent to 4 cents on each \$100 of the aggregate amount for which the group policy is issued and of any net increase in the amount of the insurance under such policy: *And provided further*, That on all policies covering life, health, and accident insurance combined in one policy by which a life is insured not in excess of \$500, issued on the industrial, or weekly or monthly payment plan of insurance, the tax shall be 40 per centum of the amount of the first weekly premium or 20 per centum of the amount of the first monthly premium, as the case may be;

“(b) Marine, inland, and fire insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or other instrument by whatever name the same is called whereby insurance is made or renewed upon property of any description (including rents or profits), whether against peril by sea or inland waters, or by fire or lightning, or other peril;

“(c) Casualty insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or obligation of the nature of indemnity for loss, damage, or liability (except

bonds and policies taxable under subdivision 2 of schedule A of Title XI) issued or executed or renewed by any person transacting the business of employer's liability, workmen's compensation, accident, health, tornado, plate glass, steam boiler, elevator, burglary, automatic sprinkler, automobile, or other branch of insurance (except life insurance, and insurance described and taxed in the preceding subdivision): *Provided*, That in case of policies of insurance issued on the industrial or weekly or monthly payment plan the tax shall be 40 per centum of the amount of the first weekly premium or 20 per centum of the amount of the first monthly premium, as the case may be;

“(d) Policies issued by any corporation enumerated in section 231, and policies of reinsurance, shall be exempt from the taxes imposed by this section.

“SEC. 504. That every person issuing policies of insurance upon the issuance of which a tax is imposed by section 503 shall make monthly returns under oath, in duplicate, and pay such tax to the collector of the district in which the principal office or place of business of such person is located. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulation prescribe.

“The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax a penalty of 5 per centum, together with interest at the rate of 1 per centum for each full month, from the time when the tax became due.”

#### **4. Proceeds Taxable as Inheritance when Payable to Estate.**

If the life insurance policy is payable to the estate its proceeds become part of that estate and pass by the terms of the will or pursuant to the intestate laws. Under such

circumstances the transfer is taxable, not of the policy, but of the proceeds of the policy. In the leading case in which this question was tested before the courts of New York the attorneys for the estate took the position that the policy itself was property and that it was not taxable as an inheritance upon the death of the assured, although payable to his estate, because it was not subject to ordinary taxation. The Court of Appeals thus disposed of the contention:

“The argument is made that it is only property which is liable to taxation under the general tax law of the State which can be taxed under the act relating to taxable transfers, and that, inasmuch as life insurance policies cannot be included in the valuation of a taxpayer’s property under the general law, they cannot be considered in assessing a tax under the collateral inheritance law. The main premise upon which this proposition rests is manifestly inadmissible. The taxable transfer law has no reference or relation to the general law. The two acts are not *in pari materia*. While the object of both is to raise revenue for the support of the government, they have nothing else in common. Nearly sixty years intervened between the passage of the earlier and the later statute, and the latter was enacted under different conditions from the former. It proceeds upon a new theory of the right of the government to tax and establishes a new system of taxation. It taxes the right of succession to property, and measures the tax in the method specifically prescribed. All property having an appraisable value must be considered, whether it is such as might be taxed under the general law or not. Many kinds of property might be enumerated which are not assessable under the general law, but which are appraisable under the collateral inheritance act. The definition of the different kinds of property which the Legislature has incorporated in the general tax law, for the purposes of that law, cannot be imported into the collateral inheritance tax law upon any

sound principle of statutory construction. It is, therefore, immaterial whether life insurance policies can be valued and assessed for taxation under the general law.”

*Matter of Knoedler*, 140 N. Y. 377; 35 N. E. 601.

The difficulty is that neither the court nor counsel observed the distinction that it was not the policy but its proceeds which became part of the estate and were taxable as an inheritance.

This led to further litigation and the matter was cleared up when it came to the taxation of the proceeds of a policy held by a non-resident in a New York insurance company. This came before the Court of Appeals in *Matter of Rhoads*, 190 N. Y. 525; 83 N. E. 1130, where the court affirmed without opinion an order of the Surrogate's Court. The testator died a resident of Massachusetts on May 30, 1905. Decedent was the owner of a life insurance policy on his life in Mutual Life Insurance Company of New York. The beneficiaries named in said policy were the decedent's wife, or in the event of her dying before him then his children were mentioned as such beneficiaries. As a matter of fact, decedent's wife and all his issue predeceased him, and at the time of his death his sister was his only heir and next of kin. The policy was in decedent's safe deposit box in Boston. Held, not taxable.

The reasoning actuating the court in the *Rhoads* case was clearly indicated in *Matter of Gordon*, 186 N. Y. 471; 79 N. E. 722, where the same question was presented. The court said:

“If the contract in this case is subject to the imposition of a transfer tax, then any contract of insurance issued to a non-resident, passing to and held by his non-resident representatives or assigns, and being administered and enforceable in a foreign jurisdiction, whether in the State of Texas or California, or in some foreign country, would

afford the basis of taxation in this State, provided only the policy was issued by a New York corporation and assess could be obtained by the tax collector to its proceeds. No distance of domicile of the assured and his transferees or beneficiaries, and no completeness of foreign jurisdiction over administration and enforcement, and no lack of anticipation of such a result upon the part of the assured, would be a bar to the attempted application of the taxing power. It requires no great imaginative processes to picture the limits and disapproval and friction to which this theory would lead if logically carried to its full length.

“It was undoubtedly the intent of the Legislature that the statute under consideration should be liberally construed to the end of taxing the transfer of all property which fairly and reasonably could be regarded as subject to the same, and this court has unequivocally placed itself upon record in favor of construing the statute in the light of such intent. But the proposition now propounded, if adopted, would lead far beyond any point which has thus far been reached, and we do not believe that it would be wise or practicable to adopt it.”

To the same effect are:

*Matter of Horn*, 39 Misc. 133; 78 Supp. 979.

*Matter of Abbett*, 29 Misc. 567; 61 Supp. 1067.

It therefore appears that while the proceeds of a policy payable to the estate of a resident and passing under his will or the intestate laws are taxable as an inheritance, they are not taxable against the estate of a non-resident, even if the company which pays the policy is a domestic corporation.

## **5. Where Payable to Beneficiary not Taxable.**

It seems equally well established in all jurisdictions where the question has been considered that where the pro-

ceeds of a life policy are payable to a beneficiary named in the policy the transfer of the proceeds of the policy is not an inheritance and is not taxable as such. The proceeds do not pass to the estate, they are not liable for the debts of the deceased, they do not pass pursuant to the terms of the will, nor are they distributed under the intestate laws of the State. In sound reason they are not within the class of gifts, grants, bargains or sales made in contemplation of death or to take effect in possession or enjoyment at or after death. For Federal statute see *post*, p. 610.

The distinction between two classes of policies—those payable to the insured or his personal representatives, and those payable to a specific beneficiary—is clearly recognized by the decisions. In the first class the contract is made for the benefit of the insured and the proceeds pass to his personal representatives as part of his estate and are liable for the payment of his debts and legacies; while in the latter case the contract is made for the benefit of others, and the proceeds are transferred to them by the terms of the contract, and not by virtue of the Statute of Distributions or the provisions of the will of the insured.

Heaton on Surrogate's Courts, p. 1100, citing *Matter of Fay*, 25 Misc. 468; 55 Supp. 749.

These propositions seem well sustained by the authorities. Thus far the question of the taxability of transfers under an insurance policy has arisen in inheritance tax cases in the States of Massachusetts, Pennsylvania, Wisconsin and New York and all agree upon the rule as here stated.

In *Tyler v. Treasurer*, 226 Mass. 306; 115 N. E. 300, the Supreme Judicial Court of Massachusetts thus discusses the question:

“The rights of the beneficiary are vested when the designation is made in accordance with the terms of the contract

of insurance. They take complete effect as of that time. They do not wait for their efficacy upon the happening of a future event. They are in no wise modified or increased at the time of the death of the insured.

The contract of life insurance differs from most other contracts in that it is not intended ordinarily for the benefit of the insured but of some dependent. Its original and fundamental conception is a provision by small periodical contributions to secure a benefit for the family. While this conception has been enlarged in some respects and especially in its commercial aspects, still the basic elements continue and are found in all the cases at bar. The insured retains no ownership of that which has passed to the beneficiary under the contract. A reserved right to change the beneficiary does not affect the essential nature of the rights of the beneficiary so long as they last. \* \* \* The insured has no title to the amount due on the policy. He does not and cannot make a gift of that. The right to that amount as an instant obligation does not spring into existence until after his death. Even then the money belongs to the insurer who is charged with the duty to pay the beneficiary under the contract. So far as he can make a 'gift' the only thing which he has to give is a right in a contract. By designating the beneficiary both the grant and the gift, so far as they exist at all, take effect in enjoyment and possession at once. Such a relation does not by fair intendment come within the descriptive words of the statute as 'property which shall pass by gift made or intended to take effect in possession or enjoyment after the death of the grantor.' The conclusion is that the sums received by the beneficiaries in accordance with the designations made in the contract of insurance are not subject to the succession tax."

The same question came before the Supreme Court of Wisconsin in *Matter of Bullen*, 143 Wis. 512, 523; 128 N. W. 109, where the widow, Mrs. Bullen, was the beneficiary

under a policy of \$25,000 on the life of her husband. The court says, as to the proceeds of this policy: "This property remained the property of Mrs. Bullen and was not a part of the estate of Mr. Bullen. The court below, therefore was right in refusing to tax it."

The Pennsylvania County Court made a similar ruling in *Vogle's Estate*, 1 Pa. Co. Ct. 352, saying: "That the money upon which the collateral inheritance tax has been directed to be paid never formed part of the decedent's estate and was not received by the accountant as administrator is, we think, conclusive against the ruling of the auditing judge. It was not an estate nor part of an estate to be enjoyed after the death of the grantor or bargainor and was therefore not within the letter or the spirit of the act of 1826 and its supplements."

The courts of New York have reached the same conclusion upon similar reasoning. In *Matter of Parsons*, 117 App. Div. 321; 102 Supp. 168, the court said: "A policy of insurance differs from other contracts as it is not ordinarily intended to bring a benefit to the insured himself, but to others after his death. The statutes of this State favor and encourage insurance for the benefit of a wife and the State is at a disadvantage when it seeks to tax such a provision for her when the company and all others recognize her right to the benefit intended.

This is not a case of an assignment 'intended to take effect in possession or enjoyment at or after such death' as mentioned in the statute. It was an absolute present assignment of the interest of the assignor in the policy. But the policy was payable at his death and therefor the assignment provided that it was payable to her if she survived him."

In *Matter of Elting*, 78 Misc. 692; 140 Supp. 238, the policy was made payable to the "administrators, executors or assigns," but it recited that this was for "the express



benefit of his wife Carrie D. Elting and surviving children.” The court held that the proceeds of the policy did not go to the estate, that the administrator was merely trustee of the fund, which could not be reached by creditors and therefore was not subject to the inheritance tax.

In *Matter of Fay*, 25 Misc. 468; 55 Supp. 749, it was held that the proceeds of the policy did not pass to the estate but to the beneficiaries named therein and that no inheritance tax was payable.

Where a life policy, payable to the estate of the insured was assigned by the insured, with power to revoke the assignment reserved, and the insured died without exercising the power of revocation it was held in a recent case that the assignee took under the assignment and not as a transfer taking effect at death and therefore no inheritance tax was due.

The opinion of the learned Surrogate is enlightening. In the course of it he says:

“There are many distinguishing features between insurance policies and actual property, like bonds, mortgages, and stocks, such as were delivered to the trustee under the trust agreements in the *Masury* and *Bostwick* cases, *supra*, but further discussion along that line would seem to be unnecessary. There is another fact, however, that should be borne in mind, and that is that these policies of insurance were all of them, together with the assignments and the deeds of trust, delivered to the trustee at the city of Philadelphia, in the State of Pennsylvania, the donor of the trust being there present at the time of the delivery, and the trust deed establishes the situs of the trust in the State of Pennsylvania, and the avails of the policies were paid to the trustee in the city of Philadelphia, and were never in the hands of the executor of the will in the State of New York.

“It seems to have been the desire of the insured to carry insurance for the benefit of his wife and child and other

members of his family, but that the avails of the policies should not be paid to them, but held in trust. Each of the trust agreements comprises several typewritten pages. It will readily be seen that under any standard form of policy all of these terms and conditions of payment could not be included; and it may have been for that reason that the policies were made payable to the insured's executors, administrators, or assigns, and then assigned to the company and the agreements entered into establishing the trust for these different beneficiaries.

“It is admitted by counsel for the State Comptroller that an insurance policy payable to a designated beneficiary, but reserving the right to the insured to change the beneficiary, does not fall within the provisions of the Transfer Tax Act (Consol. Laws, c. 60, §§ 220-245) on the policy becoming a claim by death. It is difficult to distinguish such a policy from the policies involved in this case. The policies reserve the right to the insured to change the beneficiary. Unless the insured reserved the right in the trust deed to revoke the trust, he would lose the benefit of that clause in his policy reserving to him the right to change the beneficiary. It was necessary that the revocation clause should be put in the trust agreement, to the end that it should harmonize with the policies. This case would seem to fall within the decision in *Matter of Elting*, 78 Misc. Rep. 692; 140 N. Y. Supp. 238, in which it is held that a policy of insurance on the life of a testator in terms payable to his executors, administrators, or assigns for the express benefit of testator's wife and surviving children is not subject to a transfer tax. That is evidently what the testator under the policies in question intended to accomplish by the assignment to the trustee and the deed of trust. The same principle was also involved in the case of *Matter of Van Dermoore*, 42 Hun, 326.

“My conclusion, therefore, is that the deceased was not

possessed of the policies at the time of his death, and that his beneficiaries did not obtain title to them through his will, or by the laws of the State.”

*Matter of Voorhees*, 103 Misc. 515; 171 Supp. 859.

These seem to be all the cases in which the question has arisen and as they are all to the same effect and reach the same conclusion there would seem to be no doubt that the proposition has been conclusively established. The new Federal act, however, taxes beneficiaries on all amounts received under policies in excess of \$40,000,— a new departure in taxation.

## 6. Construction of Policies.

As frequently happens while the rule of law is sufficiently clear its application is often involved in difficulty. This is because of the carelessness or indifference of those who make out the insurance policies. While the question has usually arisen between creditors and beneficiaries, or between beneficiaries and heirs or legatees, it is often hard to tell whether the language of the policy calls for its payment to the estate or to some beneficiary.

Extrinsic evidence may be resorted to in order to ascertain who was intended to be the beneficiary where the policy is ambiguous.

*Clinton v. Hope Ins. Co.*, 45 N. Y. 454.

Where the policy was in favor of the “legal heirs” of the assured it was held that an administratrix has sufficient interest in the contract to maintain an action against the insurance company. “It is true that the fund does not come into her hands technically and strictly as assets of the estate nor is it liable for his debts” but it was held that she stood in the light of a *quasi* trustee for the purposes of the action.

*Bishop v. G. L. E. O. of M. A.*, 112 N. Y. 627.

*Janda v. Bohemian R. C. U.*, 71 App. Div. 159; 75 Supp. 654.

Where a policy reads to the "legal representatives" of the assured the court has construed it to mean his widow and children and not his estate or creditors.

*Griswold v. Sawyer*, 125 N. Y. 411; 26 N. E. 468.

*Schultz v. Cit. M. L. Ins. Co.*, 59 Minn. 308; 61 N. W. 331.

In Illinois such language makes the proceeds go to the estate in the absence of provisions of the charter or other circumstances.

*People v. Phelps*, 78 Ill. 147.

A policy reading "for the benefit of estate" was construed in Florida to be intended for the benefit of the only minor child and not the creditors, under the special circumstances of the case.

*Pace v. Pace*, 19 Fla. 438.

Where a policy was for the benefit of the "heirs at law" it was held not payable to the estate but to the distributees under the laws of the State where the decedent had his domicile and not under the laws of the State where the insurance company was incorporated — Illinois, where the widow would have taken the whole proceeds.

*N. W. M. A. Assn. v. Jones*, 154 Pa. St. 99; 26 A. 253.

A creditor had no insurable interest as the Massachusetts statute then enacted, where the policy was for the benefit of creditors, held that the executrix was entitled to the proceeds of the policy in trust for those entitled to be beneficiaries.

*Clark v. Swartzenberg*, 162 Mass. 98; 38 N. E. 17.

Without further citation of authorities it is obvious that the courts incline to a construction of a life policy which will pass the proceeds to the natural objects of a decedent's solicitude, rather than to his estate.

## 7. Statutory Provisions.

None of the State statutes specifically tax life insurance and it seems to be practically the only form in which property can pass from one who seeks to make provision for the natural objects of his bounty at his death without the payment of inheritance taxes.

Under Article X of the Treasury Department rulings of 1916 the Federal inheritance tax applied only in case the insurance is payable to the estate, and this is in accord with the rulings of the State courts on the subject. But the new Federal act of 1919 taxes beneficiaries on all amounts in excess of \$40,000. See *post*, p. 610.

As the contract of life insurance when made becomes a vested right of the assured provided he keeps his part of the bargain no statute passed subsequent to the date of the contract could impair its obligation by the imposition of a tax thereon under the provisions of the U. S. Constitution which prohibits any State from passing laws which impair the obligation of contracts. Of course, the Constitution does not thus limit the power of Congress, but it does prohibit Congress from imposing direct taxes not apportioned among the States in proportion to population.

This limitation has frequently been applied to inheritance tax statutes, though not in relation to life insurance, for the simple reason that no State has yet attempted specifically to tax life policies.

*Matter of Pell*, 171 N. Y. 48; 63 N. E. 789.

*Matter of McKelway*, 221 N. Y. 15; 116 N. E. 348.

## E.—POWER OF APPOINTMENT.

### 1. The Common Law Rule.

Transfers under powers of appointment have been the subject of much litigation. It was the original theory of the law as to such transfers that the exercise of a power of

appointment was in legal effect merely the writing into the blank left by the will of the ancestor the names of the appointees. As many life tenants held powers of appointment under wills probated before any inheritance tax statutes had been enacted many courts applied the principle that the tax was on the transfer and could not affect transfers consummated prior to its enactment.

*Emmons v. Shaw*, 171 Mass. 410; 50 N. E. 1033.

*Matter of Harbeck*, 161 N. Y. 211; 55 N. E. 850.

*Hoyt v. Hancock*, 65 N. J. Eq. 688; 55 A. 1004.

So in Kentucky it was held that a contract related back to the original will. The testator devised all his property to his mother and entered into a written contract with her that in consideration of the devise she would leave by will one-half of the property she received to A. B. The testator died leaving his mother surviving and on her death she devised the property in accordance with her contract. The inheritance tax was passed after the making of the contract by the mother and before her death, and the court holds that the property passing to A. B. is not subject to the tax. The court says that reading the will and contract together as they must be read, the mother took a life estate only with an obligation to leave by will to A. B. and that therefore A. B. really took under the will of the testator and not under that of the mother.

*Winn v. Schenck*, 33 Ky. L. Rep. 615, 110 S. W. 827.

Kansas has recently applied this doctrine. Where the testator died before the statute of 1915 and the power was exercised afterwards it was held that the transfer was not taxable.

*State v. U. S. Trust Co. of N. Y.*, 99 Kan. 841; 163 Pac. 156.

In Maryland it is held that the tax is on the right to receive and, therefore, the appointees must pay the tax

under the exercise of the power on the value of the property when so received.

*Fisher v. State*, 106 Md. 104; 66 A. 661.

The majority of the States however follow the rule in *Matter of Harbeck, supra*, where no statute has intervened.

## 2. The Statutory Rule.

In order to reach the transfer of property under such powers New York in 1897 amended the statute and declared that the tax should be imposed upon the exercise of the power in the same way as though the property belonged absolutely to the donee of the power. (Chapter 284, L. 1897.)

This was sustained in

*Matter of Potter*, 51 App. Div. 212; 64 Supp. 1013.

*Matter of Vanderbilt*, 50 App. Div. 246; 63 Supp. 1079; aff. 163 N. Y. 597; 57 N. E. 1127.

*Matter of Dows*, 167 N. Y. 227; 60 N. E. 439; sus. sub. nom. *Orr v. Gilman*, 183 U. S. 278.

*Matter of Brooks*, 32 Supp. 176.

And also as to the exercise of a power under a *deed* made prior to the statute taxing inheritances.

*Matter of Delano*, 176 N. Y. 486; 68 N. E. 871; sus. sub. nom. *Chandler v. Kelsey*, 205 U. S. 466.

Under the common law rule relationship to the donor and not the donee determined the rate of tax.

*Gallard v. Winans*, 111 Md. 434-472; 74 A. 26.

But under the statute the rule is reversed.

*Matter of Walworth*, 66 App. Div. 171; 72 Supp. 984.

*Matter of Rogers*, 172 N. Y. 617; 64 N. E. 1125.

*Matter of Seaver*, 63 App. Div. 283; 71 Supp. 544.

The statute also provided that even if the donee of the power failed to exercise it the transfer should be taxed

in the same manner as if the donee had owned the property.

This provision has been the subject of much litigation and divergent rules.

### 3. The New York Rule.

The provision first came up for construction in *Matter of Lansing*, 182 N. Y. 238; 74 N. E. 882. The donee of the power exercised it but she appointed the same person who would have received the property in default of its exercise. The court held: first, that the exercise of the power was a nullity as it made no change in the devolution of the property and the appointee might elect to take under the will of the ancestor; secondly, Judge Vann, writing for the court, said: "We pass without serious discussion that part of the statute which provides, in substance, that the failure or omission to exercise a power of appointment subjects the property to a transfer tax in the same manner as if the donee of the power had owned the property and had devised it by will (L. 1897, ch. 284, § 220, subd. 5). Where there is no transfer there is no tax and a transfer made before the act relating to taxable transfers is not affected by it because, as we held in the *Pell* case, such an act imposes a direct tax and is unconstitutional since it diminishes the value of vested estates, impairs the obligation of contracts and takes private property for public use without compensation."

Judges Cullen, O'Brien and Bartlett concurred, Judges Werner and Haight dissented and Judge Gray was absent.

### 4. The Massachusetts Rule.

Meanwhile the section of the New York statute thus declared unconstitutional had been copied and is still retained in the statutes of Colorado, Connecticut, Idaho, Illinois,



Massachusetts, Minnesota, Rhode Island, South Dakota, and Wisconsin.

The Supreme Court of Massachusetts refused to follow the rule laid down by the New York Court of Appeals and sustained the provision which was declared unconstitutional in the *Lansing* case, and which had been adopted in Massachusetts by chapter 527, § 8, Laws of 1909.

The question first arose in *Minot v. Treasurer*, 207 Mass. 588; 93 N. E. 973. The court reasoned thus:

“It is but a short step further to apply the second part of the statute, which refers to coming into succession through the conduct of the donee in refusing or omitting to make an appointment that might carry the succession elsewhere. While he has the power of appointment, he is in control of the succession. He may allow it to go to the persons named in the will or deed, or he may transmit it elsewhere. By exercising the power he may give his own creditors the benefit of it after his death. When property is held subject to such possibilities of disposition, is it usurpation or an unlawful interference with vested rights for the Legislature to say that the succession in possession and enjoyment is not yet determined, that it belongs to no one until it is determined that the determination of it depends upon the will and conduct of the donee of the power, and that when it is determined by his conduct, either by action or by refraining from action, it shall be subject to a tax? We think it is in the power of the Legislature to say in reference to succession in possession after the death of the persons whose decease is awaited, that property so held is not vested in anybody, and that when it vests in possession, through a proper disposition of it which is dependent upon the will and conduct of the donee, a succession tax shall be imposed. We think that *Chanler v. Kelsey*, 205 U. S. 466; 27 S. Ct. Rep. 550, looks in this direction, although it does not discuss this particular subject. The

decision in *Moffit v. Kelly*, 218 U. S. 400, published since the argument in the present case, is almost if not quite, decisive of the question.

“The decision to the contrary in *re Lansing*, 182 N. Y. 238; 74 N. E. 882, was by four of the judges, two others dissenting in a well reasoned opinion. So the decision in the *Matter of Chapman*, 133 App. Div. (N. Y.) 337; 117 Supp. 679, which was afterwards affirmed by the Court of Appeals in 196 N. Y. 561, without an opinion, was by three judges, while two others joined in a dissenting opinion.”

The above has been followed in the later case of *Burnham v. Treasurer*, 212 Mass. 165; 98 N. E. 603, and in the very recent case of *Montague v. State*, 163 Wis. 58; 157 N. W. 508. It may be safely assumed that the courts of the States which follow the language of the original New York statute will sustain it and follow the Massachusetts doctrine.

On the other hand, the portion of the section declared unconstitutional in the *Lansing* case was omitted from the statute in 1911 and the section as thus amended has been copied by Arkansas, Indiana, Oklahoma and West Virginia, all very recent statutes yet to be construed. It is to be assumed they will sustain it and follow the New York rule.

An interesting development of the Massachusetts rule is illustrated by a case recently arising in that State. There was a deed of trust with a life use to a daughter with power of appointment. In case of her failure to exercise the power and death without issue there was an alternative power of appointment to charitable uses in the trustee. It was held that the death without issue and failure to exercise the power did not create a taxable transfer because there was a second power of appointment not yet exercised and therefore no succession upon the failure to exercise the first power of appointment by the life tenant.

*Attorney-General v. Thorpe* (Mass.), 119 N. E. 171.

## 5. Development of the New York Rule.

The rule that when the exercise of the power makes no material change from the devolution under the ancestor's will, in default of its exercise, the appointee may elect to take under the will of the ancestor who died prior to the statute and thus avoid the tax has led to much litigation in which the *Lansing* case has been sustained and applied.

*Matter of Backhouse*, 110 App. Div. 737; 96 Supp. 466; aff. 185 N. Y. 544; 77 N. E. 1181.

*Matter of Spencer*, 190 N. Y. 517; 83 N. E. 1132.

*Matter of Haggerty*, 128 App. Div. 479; 112 Supp. 1017; aff. 194 N. Y. 550; 87 N. E. 1120.

*Matter of Chapman*, 61 Misc. 593; 115 Supp. 981; aff. 199 N. Y. 562; 93 N. E. 1118.

*Matter of Haight*, 152 App. Div. 228; 136 Supp. 557.

*Matter of Hoffman*, 161 App. Div. 836; 146 Supp. 808; aff. 212 N. Y. 604.

*Matter of Lewis*, 194 N. Y. 550; 88 N. E. 1124.

Where the donee of the power makes material changes in the devolution the rule in the *Lansing* case does not apply.

*Matter of Cooksey*, 182 N. Y. 92; 74 N. E. 880.

But where the exercise of the power disposed of one-fifth of the property otherwise than it would have gone under the ancestor's will in default of its exercise; the tax attaches only to that one-fifth; the rest passes under the ancestor's will.

*Matter of Ripley*, 122 App. Div. 419; 106 Supp. 844; aff. 192 N. Y. 536; 84 N. E. 1120.

And where the donee exercised the power to pay her own debts out of the fund and left the balance to the same persons who would have received it in default of the power the tax is payable on the appointment to the creditors but the beneficiaries may elect to take the balance under the ancestor's will.

*Matter of Slosson*, 216 N. Y. 79; 110 N. E. 166.

In default of the power the remainder passed to the "children" of the donor of the power. The donee appointed her sister's children who were grandchildren of the donor. The word "children" in the donor's will could not be held to include "grandchildren" and the latter did not take under the ancestor's will but under the exercise of the power and their shares were taxed.

*Matter of King*, 217 N. Y. 358; 111 N. E. 1060.

Election to take under the will of the ancestor will be presumed where it avoids the tax.

*Matter of Mitchell*, N. Y. L. J., Nov. 22, 1913.

But a beneficiary under a power of appointment cannot accept its benefits in part and as to the rest elect to take under the will of an ancestor.

*Matter of Isabel Brush*, N. Y. L. J., April 26, 1917.

Nor can they actually receive the property under the exercise of the power and yet claim to take it under the will of the donor for purposes of the transfer tax.

*Matter of Warren*, 62 Misc. 444; 116 Supp. 1034.

See *post*, p. 278.

## 6. Construction of Wills.

It frequently becomes a serious question whether a power has been conferred or whether the provisions of the will do not, in fact, confer a fee with remainders over that are void.

In recent case of *Appeal of Luques*, 114 Me. 235; 95 A. 1021, the ancestor, who died before the statute, gave property to his wife absolutely but provided that if she should not dispose of it during life or by will then his sons should take. The widow devised to the sons but the court held they could not elect to take under the ancestor's will as

the bequest to their mother was absolute and the remainder over void.

On the other hand in a recent Arkansas case a husband devised a life estate to his wife with power to appoint "during life." She appointed by will. It was held that the exercise of the power was void and that the property passed under her husband's will who died before the statute and hence was exempt from tax.

*State ex rel. McDaniel v. Gaugan*, 124 Ark. 548; 187 S. W. 918.

So, in a recent Kentucky case a life estate was devised with power to appoint but in such language that it was held the life estate was enlarged to a fee and, therefore, the appointees could not take under the ancestor's will.

*Commonwealth v. Stoll's Estate*, 132 Ky. 234; 114 S. W. 279; 116 S. W. 687.

## 7. Where the Power is Exercised by Deed.

The power of the Legislature to impose a transfer tax upon the exercise of a power of appointment by deed was recently sustained by the New York Court of Appeals in *Matter of Wendell*, 223 N. Y. 433; 119 N. E. 879.

"The statutes prior to 1897 relate exclusively to transfers by succession or inheritance or made in contemplation of death, but the amendment of that year extended their scope.

"The statute does not attempt to impose a tax upon property but upon the exercise of a power of appointment. The act so far as it relates to the power of appointment is constitutional when the power is exercised by will even though the transfer would not be subject to a tax under the act except for the exercise of the power of appointment. (*Matter of Delano*, 176 N. Y. 486; *Chanler v. Kelsey*, 205 U. S. 466; *Matter of Vanderbilt*, 50 App. Div. 246; aff. 163 U. S. 597; *Matter of Brez*, 172 N. Y. 609; *Matter of Dows*, 167 N. Y. 227; *Orr v. Gilman*, 183 U. S. 278; *Matter of*

*Keeney*, 194 N. Y. 281; *Keeney v. New York*, 220 U. S. 525.)

“The title to the property in the deed from the decedent to his sisters came from the decedent’s father but the grantees in the deed from decedent obtained their title thereto through his deed to them and the exercise of the power of appointment given by the will of his father. The power of appointment was a privilege vested in the decedent by a testamentary provision not for his own benefit or advantage but for the benefit and advantage of those within the terms of his father’s will whom he might choose as the beneficiaries of the appointment. The constitutional power to impose a tax upon a transfer pursuant to a privilege of appointment is not dependent upon a particular manner of exercising the privilege. The power to impose taxes is one so unlimited in force and so searching in extent that the courts scarcely venture to declare that it is subject to any restrictions whatever except such as rest in the discretion of the authority which exercises it.”

The court cites *People ex rel. Eismann v. Ronner*, 185 N. Y. 285, sustaining the Mortgage Tax and *People ex rel. Hatch v. Reardon*, sustaining the stamp tax on stock transfers and then quotes as follows from *Keeney v. New York*, 222 U. S. 525, 533; 32 S. Ct. Rep. 105: “But the plaintiffs insist that there is a radical difference between an inheritance tax and one on transfers *inter vivos*. The first, they say, is an exercise, imposed on a privilege; while that complained of here is really on property, though called a tax on a transfer.

\* \* \* But if any such distinction could be made between taxing a right and taxing a privilege, it would not avail the plaintiffs in the present case. There is no natural right to create artificial and technical estates with limitations over, nor has the remainderman any more right to succeed to the possession of property under such deeds than legatees and devisees under a will. The privilege of acquiring prop-

erty by such an instrument is as much dependent upon the law as that of acquiring property by inheritance and transfers by deed to take effect at death, have frequently been classed with death duties, legacy and inheritance taxes. Some statutes go further than that of New York, and tax gratuitous acquisitions under marriage settlements, trust conveyances, or other instruments where the transfer of property takes effect upon the death, not merely of the grantor, but of any person, whosoever \* \* \*. The Fourteenth Amendment does not diminish the taxing power of the State, but only requires that in its exercise the citizen must be afforded an opportunity to be heard on all questions of liability and value and shall not, by arbitrary and discriminatory provisions be denied equal protection.”

### 8. Questions of Residence.

If the donor died in a State where the transfer is taxed only upon exercise of a power and the donee lives in another State, obviously no tax can accrue. If the donee has moved to a State where the tax is against the estate of the donor — also no tax can accrue. This and other possible complexities have produced some puzzling questions.

Where the donor of the power resided in another State and the property subject to the power was in the hands of a trustee in another State the exercise of the power by a resident is not subject to the tax in the donee's State of domicile.

*Walker v. Treasurer, etc.*, 221 Mass. 600; 109 N. E. 647.

The test to be applied is “Would the property have been taxable if it had belonged to the donee of the power?” So where a non-resident donee exercised the power over a trust fund in the possession of Massachusetts trustees shares of stock in a foreign corporation in possession of those trustees held not taxable.

*Clark v. Treasurer, etc.*, 218 Mass. 292; 105 N. E. 1055.

Exercise of power by non-resident donee taxed only as to taxable assets within the State though the donor of the power was a resident.

*Matter of Fearing*, 138 App. Div. 881; 123 Supp. 396; aff. 200 N. Y. 340; 93 N. E. 956.

The donor of the power died a resident. His wife, the donee, moved to New Jersey and there died exercising the power. Taxed only as against taxable property of a non-resident within the State.

*Matter of Kissel*, 65 Misc. 443; 121 Supp. 1088; aff. 142 App. Div. 934; 127 Supp. 1217.

Where a resident donee exercised the power over personal property without the State, held: taxable.

*Matter of Hull*, 111 App. Div. 322; 97 Supp. 701; aff. 186 N. Y. 586; 79 N. E. 1107.

Acting under a power of appointment in a will executed by his mother in Kentucky a testator residing in Minnesota exercised the power by will in favor of nephews residing in Tennessee. The property was in the custody of a resident of Kentucky. Held: that the tax was on the transfer as though the property belonged to the donee and the transfer was, therefore, taxable in Minnesota, citing *Matter of Hull*, *supra*.

*State v. Probate Court*, 124 Minn. 508; 145 N. W. 390.

A citizen of Maryland gave a life use and power of appointment to a citizen of Pennsylvania — held: that no tax was due under the exercise of the power in Pennsylvania.

*Re Duffield*, 12 Pa. St. 277.

A resident donor gave stock in Massachusetts to a Maine donee after a life estate in said donee who exercised the power. The trustees of the fund made an agreement whereby the stocks were deposited with a Maine corporation which had color of title though the actual control was still in the Massachusetts trustees — held: that complete succession could not be accomplished without the aid of the



laws of the State of Massachusetts and that the transfer under the exercise of the power was, therefore, taxable in Massachusetts.

*Gardner v. Burrill*, 225 Mass. 355; 114 N. E. 617.

Where the power was created by will of a non-resident and exercised by will of a resident, held: taxable.

*Matter of Frazier*, N. Y. L. J., March 28, 1912.

Bonds and mortgages on New York real estate transferred by a non-resident under the exercise of a power where there had been an intervening life estate, held: taxable under statute in force at date of the exercise of the power.

*Matter of Warden*, 94 Misc. 563; 157 Supp. 1111.

For questions arising under the taxation of transfers by power of appointment, see post Part III D Life Estates and Remainders.

## F.—COMMON LAW TRANSFERS.

Transfers pursuant to the provisions of the common law are generally held not taxable under the usual language of the statutes taxing inheritances and must be specified in the act if they are not to escape taxation.

### 1. Dower.

A widow does not take dower as heir of her husband and it does not pass by intestate law. (Excepting in Illinois and North Carolina.)

*Re Avery*, 34 Pa. St. 304.

*Matter of Weiler*, 122 Supp. 608; aff. 139 App. Div. 905; 124 Supp. 1133.

*Matter of Church*, 80 Misc. 447; 142 Supp. 284.

*McDaniel v. Byrket*, 120 Ark. 295; 179 S. W. 491.

*Estate of Sanford*, 91 Neb. 752; 137 N. W. 864.

*Matter of Bullen* (Utah), 151 Pac. 533.

*Sandford v. Jackson*, 10 Paige 266.

*Konvalinka v. Schlegel*, 104 N. Y. 125; 9 N. E. 868.

*Gray v. Gray*, 5 App. Div. 132; 39 Supp. 57.

*Kimbel v. Kimbel*, 14 App. Div. 570; 43 Supp. 900.

The dower interest is allowed as a deduction unless a bequest is accepted in lieu of dower in which case no dower is set off and the bequest in lieu of dower is taxable.

*State v. Simms* (Utah), 173 Pac. 964.

*State v. Lane* (Ark.), 203 S. W. 17.

*Matter of Gordon*, 172 N. Y. 25; 64 N. E. 753.

*Matter of Riemann*, 42 Misc. 648; 87 Supp. 731.

*Matter of De Graaf*, 24 Misc. 147; 53 Supp. 591.

*Matter of Barbey*, 114 Supp. 725.

Nice questions often arise as to whether the bequest is intended to be in lieu of dower or in addition to dower. The intent of the testator governs.

*Matter of Vivanti*, 63 Misc. 618; 118 Supp. 680; aff. 206 N. Y. 656.

So where the decedent gave his widow the life use of all his realty, after the payment of all taxes, insurance and repairs it was held that he could not have intended also to give one-third of the life use of the same property.

*Matter of Foster*, 93 Misc. 400; aff. 174 App. Div. 864.

*Matter of Martinez*, 160 Supp. 1121.

And where the testator devised his entire estate to a trustee with part of the income to the widow, upon her acceptance of the bequest held an incompatibility and no deduction for dower allowed.

*Matter of Keys*, N. Y. L. J., March 15, 1912.

Where there was a life estate in the widow with power to invade the principal if the income fell below \$1,500 the widow's dower was allowed as a deduction.

*Matter of Bloss*, 100 Misc. 643; 166 Supp. 1005.

## 2. Tenancy by the Curtesy.

The same rule was applied as to a husband's tenancy by the curtesy.

*Matter of Starbuck*, 63 Misc. 156; 116 Supp. 1030; aff. 201 N. Y. 531; 94 N. E. 1098.

As a result of this decision the New York statute was amended to tax tenancy by the curtesy. (Ch. 732, L. 1911.)

Curtesy is not vested right and is not alienable during the marriage; but may be modified or annulled at any time before the death of the wife.

*Matter of Hinrichs*, 148 Supp. 912.

*Matter of Beckhardt*, N. Y. L. J., June 7, 1913.

*Thurber v. Townsend*, 22 N. Y. 517.

*Matter of Clark*, 40 Hun, 233.

*Albany Co. Sav. Bank v. McCarty*, 149 N. Y. 71.

On the other hand, where the bequest was of the entire estate for life or until remarriage, it was held that there was an intent to separate the life use and the dower and a deduction for dower was granted.

*Matter of Knabe*, 94 Misc. 67.

And generally, where there are no express words giving the bequest "in lieu of dower," the widow is entitled to both dower and bequest also, unless there is an incompatibility.

*Matter of Stuyvesant*, 72 Misc. 295; 131 Supp. 197.

*Lewis v. Smith*, 9 N. Y. 520.

*Adsit v. Adsit*, 2 Johns. Ch. 448.

*Horstman v. Flege*, 172 N. Y. 384; 65 N. E. 202.

The mere fact that the widow is largely provided for in the will is no evidence of incompatibility.

*Casey v. McGowan*, 50 Misc. 426; 100 Supp. 538.

*Closs v. Eldert*, 30 App. Div. 338; 51 Supp. 881.

*Accounting of Fraser*, 92 N. Y. 239.

The intent of the testator must be gathered from the will.

*Roessle v. Roessle*, 81 Misc. 558; 142 Supp. 984.

But if the disposition which the testator makes of his

estate clearly indicates that he intended the provisions in his will to be in lieu of dower she is put to her election.

*Savage v. Burnham*, 17 N. Y. 561.

*Vernon v. Vernon*, 53 N. Y. 531.

*Asche v. Asche*, 113 N. Y. 232; 21 N. E. 70.

Where the husband secures an interlocutory judgment of divorce under Section 1774 of the Code, and dies before final judgment, the wife is not deprived of her dower right in his real estate.

*Byron v. Byron*, 134 App. Div. 320; 119 Supp. 41.

Where a wife obtains a divorce in Indiana on grounds other than adultery, her right of dower under the laws of the State of New York are not affected.

*Van Blaricum v. Larson*, 146 App. Div. 278, 130 Supp. 925; aff. 205 N. Y. 355.

In States where there are allowances to the widow by statute in the nature of dower, such as "widow's award" and "family allowance" or "homestead"—are generally held exempt from inheritance taxes.

*Kennedy's Estate*, 157 Cal. 516; 108 Pac. 280.

*Crenshaw v. Moore*, 124 Tenn. 528; 137 S. W. 924.

*Blackburn's Estate*, 51 Mont. 234; 152 Pac. 31.

*Smith v. State*, 161 Wis. 588; 155 N. W. 509.

*Strahan's Estate*, 93 Neb. 828; 142 N. W. 678.

*Hildebrand's Estate* (Pa.), 104 A. 711.

California now taxes the widow's "Homestead" as a transfer at death.

*Stewart's Estate*, 174 Cal. 547; 163 Pac. 902.

The widow's allowance is not subject to tax in Minnesota.

*State v. Hennepin County*, 137 Minn. 238; 163 N. W. 285.

In Illinois the contrary rule prevails. Dower is held taxable as a transfer.

*People v. Field*, 248 Ill. 147; 93 N. E. 721.

*People v. Nelms*, 241 Ill. 571; 89 N. E. 683.

A statute exempting life estates devised by testator does not apply where the widow renounces under the will and elects to take her statutory interest in the property.

*Connell v. Crosby*, 210 Ill. 380; 71 N. E. 350.

*Billings v. People*, 189 Ill. 472; 59 N. E. 798.

A widow's award is also a taxable transfer in Illinois.

*People v. Forsyth*, 273 Ill. 141; 112 N. E. 378.

North Carolina follows the Illinois rule and taxes dower as an inheritance.

*Corporation Commissioners v. Dunn*, 174 N. C. 679; 94 S. E. 481.

## 2. Tenancy by the Curtesy.

A husband's tenancy by the curtesy was held not taxable in New York.

*Matter of Starbuck*, 63 Misc. 156; 116 Supp. 1030; aff. 201 N. Y. 531; 94 N. E. 1098.

As a result of this decision the New York statute was amended to tax tenancy by the curtesy. (Ch. 732, L. 1911.)

Curtesy is not vested right and is not alienable during the marriage; but may be modified or annulled at any time before the death of the wife.

*Matter of Hinrichs*, 148 Supp. 912.

*Matter of Beckhardt*, N. Y. L. J., June 7, 1913.

*Thurber v. Townsend*, 22 N. Y. 517.

*Matter of Clark*, 40 Hun, 233.

*Albany Co. Sav. Bank v. McCarty*, 149 N. Y. 71.

Where a wife executes a will devising all her property to two children of a former marriage and without providing for future issue, a child subsequently born is entitled to succeed to the same portion of his mother's real and personal property as would have descended or been distributed to him if she had died intestate; he takes this interest by inheritance as an heir at law, and his father is entitled to a tenancy by curtesy in so much of the real estate as descends to him.

*Yung v. Blake*, 163 App. Div. 501; 148 Supp. 557.

An estate by the curtesy does not attach to property conveyed to a wife subject to the use and occupation of another

during life, where she was never in actual possession of the property, and she died before the termination of the life estate.

*Collins v. Russell*, 184 N. Y. 74; 76 N. E. 751.

### 3. Marital Right.

The common law right of a husband to succeed to the personal property of his intestate wife was held not a taxable transfer under the intestate laws of New York.

*Matter of Green*, 144 App. Div. 232; 129 Supp. 54.

The New York statute was amended to cover such transfers in consequence of this decision. (Ch. 732, L. 1911.)

As to a husband's marital right to succeed to his wife's personal property in New York, see generally:

*Matter of Thomas*, 33 Misc. 729; 68 Supp. 1116.

*Robins v. McClure*, 100 N. Y. 328; 3 N. E. 663.

*Wadheim v. Hancock and ano.*, 8 Misc. 506; 28 Supp. 766.

The right rests solely upon the common law in the absence of statute, and was not affected by the married woman's acts.

*Vallance v. Bausch*, 28 Barb. 633.

*Burke v. Valentine*, 52 Barb. 422.

And when a married woman dies leaving no descendants and no will the husband is entitled to her personal property *jure mariti*.

*Matter of Russell*, 168 N. Y. 169; 61 N. E. 166.

*Barnes v. Underwood*, 47 N. Y. 351.

But if the wife leaves a will the transfer is pursuant to the will even though she leaves all her property to her husband, and the succession is taxable.

*Matter of Andrews*, N. Y. L. J., February 21, 1912.

### 4. Tenancies by the Entirety.

#### a. NOT TAXABLE AS AN INHERITANCE.

The succession to the sole estate on the death of one tenant by the entirety is not taxable as an inheritance and

is not covered by the language of the usual inheritance tax statute.

*Palmer v. Treasurer*, 222 Mass. 263; 110 N. E. 283.

None of the statutes attempted specifically to tax this class of succession until the amendment to the New York statute in 1916, repealed the following year.

b. NATURE OF THE ESTATE.

Blackstone in his commentaries (Lewis Ed. Bk. II \*p. 180) says: "The properties of a joint estate are derived from its unity, which is fourfold: the unity of interest, the unity of title, the unity of time and the unity of possession."

And this is the doctrine of all modern writers on real estate:

Washburn on Real Estate, 8th ed., vol. I, p. 529.

Reeves on Real Property, vol. II, §§ 689, 670.

Tiedeman on Real Property, 2d ed., § 237.

Cyc., vol XXIII, p. 484.

These authorities also hold that it arises, not out of contract, but by operation of law, as a result of the marital relation.

These rules are important to be borne in mind and strictly applied, because, if the courts, in dealing with common law estates, do not measure them by common law standards, the result is confusion. They apply only to real estate. There is no such thing as tenancy by the entirety of personal property.

*Matter of Albrecht*, 136 N. Y. 91; 32 N. E. 632.

In a case involving only the joint ownership of personal property, the New York Court of Appeals recently observed, *obiter*, as follows:

"Joint tenants, by reason of the combination of entirety of interest with the power of transferring in equal shares, are said to be seized *per my et per tout*, or by the half *and* the whole, but tenants by the entirety are seized *per tout et*

*non per my*, and the conveyance by either husband or wife will have no effect against the other if survivor. (*Hiles v. Fisher*, 144 N. Y. 306; 39 N. E. 337.) Upon the vesting of an estate by the entirety, both tenants become seized of the whole estate, and upon the death of one the survivor acquires no new or additional interest by survivorship. (*Matter of Klatzl*, 216 N. Y. 83.)

*Matter of McKelway*, 221 N. Y. 15; 116 N. E. 348.

It has also been held in *Hiles v. Fisher*, 144 N. Y. 306; 39 N. E. 337, that the statutes have so far modified the common law rule as to rents and profits of lands held by the entirety that while the husband and wife are living they are joint tenants of the rents and profits; but the court is very careful to point out that the right of the husband to the entire rents and profits arose *jure uxoris* and not from the nature of the tenancy by the entirety, the court saying, "As long as the question of survivorship is in abeyance they are joint tenants of the use, as the right of the husband to the rents and profits did not spring from the *nature of the estate* but from the common law rules of coverture."

### 3. HOW CREATED.

A tenancy by the entirety at common law could only be created by a conveyance from a third party to husband and wife; and, as they were one in the eye of the law, the estate was a unit—inseverable.

But when a husband conveyed to his wife *and himself* as "tenants by the entirety," the Comptroller contended that a tenancy by the entirety was not created, merely because it was so described in the deed.

The Court of Appeals was evenly divided on the question.

*Matter of Klatzl*, 216 N. Y. 83; 110 N. E. 181.

In *Matter of Horler*, 97 Misc. 587; 161 Supp. 957; reversed on another point 180 App. Div. 608; 168 Supp. 221, a wife deeded to her husband a one-half interest in her real estate



with the intention of creating a joint tenancy in the whole with right of survivorship. The Comptroller contends, on appeal, that such a deed cannot create a common law estate under the common law rules as to unity.

The learned Surrogate, in discussing the *Klatzl* case, in his opinion in the *Horler* case, says:

“The Comptroller contends that the decision of the Court of Appeals in the *Matter of Klatzl* (216 N. Y. 83; 110 N. E. 181) is controlling on this point. In that case decedent, who was seized of certain real estate, conveyed it to himself and his wife as tenants by the entirety. Three of the judges of the Court of Appeals held that the conveyance did not constitute a tenancy by the entirety, but that the husband and wife held as tenants in common, and that upon the death of the husband his wife took his undivided one-half under the provisions of his will. Three of the judges held that the conveyance did constitute a tenancy by the entirety, and that no part of the property was subject to taxation upon the death of the husband. The chief justice, while holding that the wife took the property by virtue of the deed from her husband, held that her undivided one-half passed to her husband upon her death, and that that one-half was subject to a transfer tax. I do not understand the decision in *Matter of Klatzl* to go so far as to subject joint tenancies to the succession tax on the death of any joint tenant. In the matter under consideration there is little room for difference of opinion as to the character of the tenancy created by the conveyance from the decedent to her husband, as it is expressly stated therein that the grantor conveys an undivided one-half interest in the premises to the grantee, and that it was her intention to create a joint tenancy in herself and her husband, with an absolute fee in the survivor. The facts in this matter, therefore, are different from those in the *Matter of Klatzl*.”

## d. HOW TERMINATED.

Death terminates the estate by the entirety and transforms it to a sole estate.

Divorce transforms it to a tenancy in common.

*Stelz v. Shreck*, 128 N. Y. 263; 28 N. E. 510.

In this case property had been deeded to husband and wife. Thereafter there was a divorce *a vinculo* for fault of the wife and the husband married a second time. On his death the first wife claimed the property as tenant by the entirety, and the court held that as her title sprang not from contract but from marital relation, that the divorce had destroyed the tenancy by the entirety and created a tenancy in common.

The parties also by mutual agreement can sever the entirety under the New York statute (Domestic Relations Law).

Sec. 56. HUSBAND AND WIFE MAY CONVEY TO EACH OTHER OR MAKE PARTITION.—Husband and wife may convey or transfer real or personal property directly, the one to the other, without the intervention of a third person; and may make partition or division of any real property held by them as tenants in common, joint tenants or tenants by the entireties. If so expressed in the instrument of partition or division, such instrument bars the wife's right to dower in such property, and also, if so expressed, the husband's tenancy by curtesy.

This statute has been held not to abolish tenancy by the entirety.

*Bertles v. Noonan*, 92 N. Y. 152.

*Zortlein v. Bram et al.*, 100 N. Y. 12; 2 N. E. 388.

## e. EFFECT OF TAXING STATUTE.

In 1916 New York adopted a statute taxing the transfer at the death of one tenant by the entirety. This was con-

strued in *Matter of Moebus*, 178 App. Div. 709; 165 Supp. 887, where the court said:

“Hence we are brought to the final inquiry: Does the surviving tenant by the entirety in the State of New York acquire an interest that is taxable? Speaking of such estates with the original incidents, unaffected by the later statutes, it has been accurately said of such tenants: ‘Death separated them, and the survivor still held the whole because he or she had always been seized of the whole, and the person who died had no estate which was descendable or devisable.’ (*Stelz v. Shreck*, 128 N. Y. 263.) Notwithstanding this original peculiarity of title, the use and enjoyment now does undergo a decided change by the death of one spouse. By common law, the husband during coverture had the sole use or profits of this estate. But by reason of the married woman’s property acts in New York, each has now equal rights in the rents and profits, so long as the question of survivorship is in abeyance. (*Hiles v. Fisher*, 144 N. Y. 306; *Grosser v. City of Rochester*, 148 N. Y. 235; see also *Kip v. Kip*, 33 N. J. Eq. 213.) The old idea that this estate is an unit made up of indivisible parts (*Stuckey v. Keek’s Exrs.*, 26 Penn. St. 397, 339), is no longer true in New York. As to income its unity is gone. Indeed, the term ‘entirety’ has become inexact and perhaps misleading.

“With such a succession from the dead to the survivor as to one-half of the profits—and profits represent the land’s usable value—it would seem strange if that succession could not be taxed.

“Where a joint bank deposit was in question in case of a husband’s death in 1913, the court held such a joint tenancy not taxable under the language of that earlier statute, since such property thus disposed of is not ‘made in contemplation of \* \* \* death,’ nor ‘intended to take effect in possession or enjoyment at or after such death.’ Mr. Justice Woodward, however, added: ‘If the Legislature

deems such dispositions of property to be properly taxable that is a question which may be dealt with in the proper department, but this court has no power to enlarge upon the scheme of tax laws. (See *Matter of Starbuck*, 137 App. Div. 866; *Matter of Green*, 144 id. 232-234, and authorities cited.)' (*Matter of Tilley*, 166 App. Div. 240, 243.) In *Matter of Klatzl*, 216 N. Y. 83, the death was in 1913. In 1906, Klatzl had deeded a property in New York to himself and wife as 'tenants by the entirety,' which the Surrogate held effective. The Court of Appeals (reversing the Surrogate and Appellate Division), however, held the property taxable to one-half of its value, as, in the majority view, the conveyance created only a tenancy in common. Judge Bartlett concurred in the result, on the express ground that, even as tenants by the entirety, one undivided half of the profits to which the husband had been entitled during his life passed into the wife's possession by the husband's death (p. 89).

"Estates by the entirety, if wholly escaping the transfer tax, would be easily resorted to as a means to put valuable lands beyond taxation. This is a period when the taxing power is in full exercise, and seems to be required for the general welfare. The Legislature has clearly enlarged the statute, so as to include the succession by survivorship to an estate by the entirety. Hence I advise to tax the lands held as tenants by the entirety (both strictly such, and the Yonkers land under contract of sale), for *one-half* their value. This also applies to the joint personalty, with the result that the value of the joint interest, appraised at \$64,811.89, should be halved, namely, \$32,405.95, and as thus modified, the order of the Surrogate's Court of Westchester county should be affirmed, without costs of this appeal."

By a subsequent amendment the tax on entiresities has been

eliminated from the New York statute, and such transfers are now held not taxable.

*Matter of Wormser*, 102 Misc. 501; 169 Supp. 206.

## 5. Joint Tenancy.

A devise to two or more persons will be construed as creating a tenancy in common unless expressly declared in the will to be a joint tenancy.

*Matter of Eldridge*, 29 Misc. 734; 62 Supp. 1026.

Where a devise is expressly declared to be in joint tenancy each of the interests is of equal value in ascertaining the tax.

*Matter of Sullivan*, 94 Misc. 529; 159 Supp. 616.

The first question arising is whether a joint tenancy has in fact been created, and this must be clear, as joint ownership has been held an object of disfavor.

*Overheiser v. Lackey*, 207 N. Y. 229.

### a. NOT GENERALLY TAXABLE.

In the absence of statute the transfer at the death of one of the joint tenants is generally held not to be an inheritance or a contract to take effect at death under the ordinary language of the inheritance tax statutes.

*Matter of Tilly*, 166 App. Div. 240; 151 Supp. 79; aff. 215 N. Y. 702.

*Matter of Thompson*, 167 App. Div. 356; 153 Supp. 164; aff. 217 N. Y. 609.

*Matter of Dalsimer*, 167 App. Div. 365; 153 Supp. 58; aff. 217 N. Y. 608.

*McDougald v. Boyd*, 172 Cal. 753; 150 Pac. 168.

*Attorney General v. Clark*, 222 Mass. 291; 110 N. E. 299.

In the *Tilly* case, *supra*, the court said: "The right of survivorship vests at the creation of the joint tenancy, and the only question determined by death is which shall take the entire estate. Under such circumstances it is clear that there is no succession to be taxed, for it was not 'made in

contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.' The possession is given upon the creation of the estate; the rights are absolutely and conclusively fixed, and the only question which is contingent is which of two or more joint tenants shall eventually own the entire estate. But each is in full possession, each has full ownership as against all the world, with the exception of the equal right of the other, and the transfer which becomes fully determined at the death of one of two joint owners relates back to the creation of the estate. It was then that the rights vested, and the death only determines which shall be the gainer by the transaction."

The California court followed the same line of reasoning as these New York cases:

"Mrs. Boyd did not take any interest in the deposits as heir of or successor to her deceased husband. She took by virtue of her estate originating at the time of creation of the joint tenancies. The imposition of the tax cannot, therefore, be sustained upon the theory that the deposits formed part of the estate of Colin M. Boyd passing upon his death to his wife. Boyd died on March 13, 1912. The inheritance tax statute then in force was the act approved April 7, 1911, and this act did not undertake to impose a tax upon the right accruing to a surviving joint tenant on the death of his co-tenant."

*McDougald v. Boyd*, 172 Cal. 753, 756; 150 Pac. 168.

In Massachusetts the doctrine was stated thus:

"The statute does not in express terms authorize the taxation of the interest accruing to a surviving tenant upon the termination of a joint tenancy by the death of his co-tenant. In England such interests are expressly made taxable by statute. (St. 57 & 58 Vict., c. 30, § 2 [d] xx.) We think that the laws regulating the intestate succession

mean the statute laws regulating the descent and distribution of intestate estates and do not include the succession of property which passes under the common law. Joint tenancies arise under the common law, and the doctrine of survivorship thereunder grows out of the application of common law principles wholly independent of statute. Joint tenants hold under the conveyance or instrument by which the tenancy is created.”

*Attorney General v. Clark*, 222 Mass. 291, 295; 110 N. E. 299.

Where stock was placed in joint names by one Dana to retain the services of one Seibert in the business, and a power of revocation and to vote the stock was reserved, the court made a distinction and held the succession taxable, stating its reason thus:

“The suggestion which has been made that if we hold this transfer taxable we would have to hold the same as to all joint tenancies in personal property, or the further suggestion that if Seibert’s interest in this stock becomes taxable upon Dana’s death, if Seibert had died first, a like interest passing to Dana would have then been subject to taxation, is not correct. The latter could not be so, because Dana did not acquire his interest in the stock by ‘gift’ from Seibert, whereas Seibert did acquire his interest therein by ‘gift’ from Dana.”

*Matter of Dana*, 164 App. Div. 45; 149 Supp. 417; aff. 214 N. Y. 710.

It is difficult to reconcile the *Dana*, and *Thompson* and *Dalsimer* cases. The fact that the gifts were from husband to wife was not sufficient to alter the nature of the tenancy; and the fact, in the two latter cases, that the tenancy was created by *gift* was possibly overlooked.

No true common law joint tenancy can be created by gift because there is no unity of title. Nor does the reservation of a power to revoke afford the distinction because, by its

very nature, a joint tenancy is always revokable by conveyance at the option of either joint tenant.

b. WHERE SUCCESSION IS SPECIFICALLY TAXED.

Estate attorneys have not been slow to take advantage of the loophole thus afforded and, on the other hand, Legislatures have taken alarm at the escape of large properties from a tax that must reach all or be unfair. In California an amendment in 1915 declared that where a decedent has placed property in the joint names of himself and another without consideration it shall be deemed a transfer to take effect at death and be taxable accordingly. The Federal statute taxes the interest to which a surviving joint tenant succeeds.

The New York Legislature went a step further. The courts had held that each joint tenant owned the *whole*, that death merely determined which should survive, but did not alter the nature of the ownership, and that therefore there was no tax. The Legislature accepted the doctrine and taxed the *whole* property on the death of one joint tenant.

Chapter 664, L. 1915, provides as follows: "Whenever intangible property is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased tenant by the entirety, joint tenant or joint depositor and had been bequeathed to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such



deceased tenant by the entirety, joint tenant or joint depositor, by will.”

And this was copied by the California statute of 1917.

### C. CONSTRUCTION OF THE STATUTE.

The New York act was open to obvious objections and was at once attacked as unconstitutional, and was so held by the lower courts, which were reversed on appeal in two recent cases as to half the property transferred.

In the *Matter of McKelway*, decided by the Court of Appeals May 8, 1917 (221 N. Y. 15, 116 N. E. 358), Judge Pound, writing for the court, said:

“But joint ownership in personal property may be severed by the act of one in disposing of his interest. If the interest of one joint owner passes to a third party he and the other joint tenant become tenants in common. The doctrine of the survivorship applies only if the jointure is not severed. (Williams on Personal Property, pp. 302-306.) The undivided half of this joint property which Mr. McKelway might have effectually disposed of at any time during his life never passed into the absolute ownership of his wife until her husband’s death. A transfer tax thereon does not diminish the value of a vested estate and is free from the objections to a tax on vested remainders and reversions as set forth in *Matter of Pell*, 171 N. Y. 48; 63 N. E. 789, or to a tax on contingent remainders as set forth in *Matter of Lansing*, *supra*.

“As to the one-half which Mrs. McKelway herself owned and had the right to dispose of, the rule of the *Pell* case must govern. She gained nothing in regard thereto by the death of her husband except as the *jus accrescendi* eliminated his interest. The right of the survivor of two joint tenants of personal property to the exclusive ownership thereof may be deemed a taxable transfer of one-half

of the joint property but not to the whole. It is taxable only to the extent of the beneficial interest arising by survivorship, which is, as we have seen, the accruer by survivorship of the whole instead of the half. To this extent it was a property rightfully acquired only on survivorship, analogous to an interest created by a power of appointment under a will executed prior to the enactment of the law taxing transfers, and, therefore, one that could be cut down by the imposition of an excise tax after the joint ownership began. (*Matter of Vanderbilt*, 50 App. Div. 246; 63 Supp. 1079; 163 N. Y. 597.) The imposition of such a tax violates no contract for neither joint tenant agrees not to terminate the joint tenancy. Mrs. McKelway had no contract with her husband as to the joint property which was not as ambulatory as a will to the last moment of Mr. McKelway's life and, for the purposes of taxation, she is deemed to have acquired his interest in the joint property by his death."

The same problem was presented to the court in California with a different result, the court holding that the statute could not apply to joint estates created prior to its enactment. In this case a joint bank account was opened by husband and wife in 1911. It was held that the joint title had vested and that there was no succession at the death of one of the joint tenants notwithstanding the amendment of 1915. Neither the deceased nor her husband had drawn any money from the account since it was opened or made any deposits. The court reasons thus: "A transfer to joint tenants gives each of the tenants immediately the title and right of possession and enjoyment of the whole property and the survivor succeeds to no new title or right on the death of his co-tenant but is merely relieved thereby from the co-tenant's further interference.

The *McKelway* case has recently been followed and applied by the New York courts in several cases.

*Matter of Wintjen*, 99 Misc. 471; 165 Supp. 927.

*Matter of Hauser*, 166 Supp. 1079.

*Matter of Egerton*, 170 Supp. 222.

In *Matter of Teller*, 178 App. Div. 450, 165 Supp. 517, the opinion in the *McKelway* case was held to apply not only to joint estates created prior to the act of 1915, but to those created afterwards, as well. The court said:

“When this appeal was argued it seemed necessary to decide whether the ownership of the property was in the testator and his wife as tenants in common or jointly; but a decision of the Court of Appeals in *Matter of McKelway* on May 8th, 1917, I think, disposes of all the questions involved on this appeal. That proceeding involved the taxability of personal property held by McKelway and his wife jointly, some of which they acquired before and some after the enactment of this statute, and his death was subsequent to the time the statute took effect. There, as here, the tax appraiser ruled that the property was taxable for its full value as though it passed under the will, and the Surrogate’s Court reversed the ruling on the theory that the only transfer from McKelway was during his lifetime on the creation of the joint tenancy and before the enactment of the statute. The Appellate Division affirmed but the Court of Appeals reversed, holding that the property was taxable to the extent of one-half of its value, on the theory that a joint owner of *personal* property may dispose of his own interest during his lifetime, and that the doctrine of survivorship applies only if the jointure is not thus severed, and that, therefore, the absolute ownership of the undivided half of the joint property which the deceased joint owner might have disposed of passed to the survivor upon his death, and not until then. The effect of that decision is that the surviving joint tenant has at all times been the

owner of an undivided half interest subject to the right of his cotenant to take by survivorship, and that therefore that undivided interest was not taxable but that the survivor succeeds to the absolute ownership of the other undivided half interest only by and upon the death of his cotenant, and that, therefore, such interest is taxable. On that construction of the statute no constitutional question arises, for it does not become retroactive; and since an undivided half interest would be taxable if they held the property as tenants in common the same result follows."

The appeal to the Court of Appeals in *Matter of Teller* was dismissed (223 N. Y. 565) on the ground that no property was involved in which the joint estate had been created prior to the statute, and the question was therefore left open as to the application of the act to estates created subsequent to the statute.

A second test case was necessary and was taken to the Court of Appeals in *Matter of Dolbeer*, 226 N. Y., mem. The opinion is *per curiam* and is in full as follows:

"This appeal presents the question: Is the entire amount of a joint bank account in the name of husband and wife, payable to the survivor, created subsequent to the taking effect of chapter 664 of the Laws of 1915, taxable on the death of the husband? An appeal from a final order is not an appeal where questions should be certified as provided by the Code of Civil Procedure (§ 190, subd. 3), and it is unnecessary to answer the question certified.

"In *Matter of McKelway*, 221 N. Y. 15, it was held that even when the joint account was created *prior* to the adoption of the statute, the transfer by survivorship was taxable to the extent of one-half the joint property. When the joint account is created *subsequent* to the adoption of the statute, the privilege of acquiring the entire property by the right of succession may be subjected to the tax on the method of acquisition. (*Matter of Vanderbilt*, 172 N. Y. 69, 73; *Mat-*

*ter of Keeney*, 194 N. Y. 281; 222 U. S. 525.) The right to take property by survivorship is the creation of law upon which the State may impose conditions (*Matter of Dows*, 167 N. Y. 227; *Matter of White*, 208 N. Y. 64, 67), if no vested or contract rights are thereby violated.

“The record does not disclose who furnished the money which was deposited to the joint credit. Nothing indicates that the succession in this case was not donative in character (*Matter of Orvis*, 223 N. Y. 1, 7), and we may well reserve consideration of the application of the statute to a case where the survivor had previously acquired his interest for value.

“The order of the Appellate Division should be reversed, with costs in this court and in the Appellate Division, and the proceeding remitted to the Surrogate’s Court for the purpose of imposing a tax in accordance with this opinion.”

Notwithstanding the statute, however, the New York courts still hold that the fact of joint tenancy merely creates a presumption as to actual ownership and that the Comptroller may still prove actual ownership in the decedent of the joint fund.

*Matter of Maguire*, 99 Misc. 466.

Conversely the estate may prove actual ownership of the joint fund in the surviving joint tenant. So, where an attorney had a joint account with his client merely for mutual convenience, but the money actually belonged to the client, the interest of the attorney was held not taxable on his demise.

*Matter of Buchanan*, 184 App. Div. 237; 171 Supp. 708

## 6. Escheat.

In case of escheat the State taxes the transfer and the property is held by the State usually as a trust fund, while

the tax goes to the treasury. In Illinois the county gets the fund derived from escheats, while the State gets the tax.

*People v. Richardson*, 269 Ill. 275; 109 N. E. 1033.

Questions of escheat are often involved with those of presumption of death.

Where a public administrator had obtained letters of administration over an estate consisting of a savings bank account deposited in 1819, there is no presumption from the fact that this money had never been demanded that decedent died prior to the inheritance tax act of 1885. No proof was presented or could be discovered as to what had become of the woman, but as there was no presumption of death there could be no escheat. Tax assessed and order affirmed.

*Matter of Bernard*, 89 Misc. 705; 152 Supp. 716.

The intestate, a native of Sweden, died on November 17, 1904, in the city of New York, leaving a small amount of money in a savings bank, and, so far as appears, no widow or next of kin in this State. Inquiry failed to disclose any knowledge of him, his family or next of kin. Letters of administration were issued to the public administrator, whereupon the Comptroller of the State of New York applied to the Surrogate to have an appraisal of the property subject to a transfer tax.

It was held that there was no escheat but that the deceased was presumed to have next of kin. The court said:

“ \* \* \* Upon the death of the decedent his personal property vested in the administrator, and his next of kin were entitled to the property upon proving their relationship to the deceased. No such person has appeared and no such person has been found to be in existence. There has been no transfer ‘dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged. *Matter of Vanderbilt*, 172 N. Y. 69; 64 N. E. 782, had relation to a trust estate in

which the ultimate beneficiaries were uncertain, and what is said in that case relates to such an estate. The only uncertainty as to the ownership of this property depends upon the fact as to whether the deceased left next of kin. The presumption is that the deceased left next of kin, but there is no presumption that he left a widow or descendants. It is presumed, therefore, that the property vested in the next of kin of the deceased, and is therefore taxable under section 220 of the Tax Law, and as it does not appear that it is exempt under section 221 of the Tax Law, the tax imposed by subdivision 6 (now subd. 7) of section 220 applies, and it is taxable at the rate of 5%."

*Matter of Lind*, 132 App. Div. 321; 117 Supp. 49; aff. 196 N. Y. 570; 90 N. E. 1161.

### G.— CIVIL LAW TRANSFERS.

Under the civil law the wife has a one-half interest in the gains or profits of the matrimonial partnership and succeeds thereto at her husband's demise, under an implied contract at marriage.

#### 1. Taxable.

In California it was held that the wife succeeds as heir to her husband and that the transfer is taxable under the California inheritance tax law.

*Estate of Moffit*, 153 Cal. 359; 95 Pac. 653; sustained sub. nom. *Moffit v. Kelly*, 218 U. S. 400.

But the new California statute (see Appendix) in effect July 27, 1917, exempts a widow's community interest in her husband's property in all cases where death occurs subsequent to that date.

#### 2. Not Taxable.

In Louisiana it is held that the succession is not as heir or under the intestate law, and although the husband could

defeat the wife's interest in his will, as he did not do so the succession is not taxable.

The court said: "It is true that the right of *usufruct* which is vested in the surviving spouse is defeasible at the will of the deceased; but it is nevertheless a right confirmed by the law which enters into and forms part of the marriage contract and of which the survivor can be deprived by no one save the deceased spouse."

*Succession of Marsal*, 118 La. 212; 42 So. 778.

See also *Succession of Baker* (La.), 55 So. 714.

In Nevada and Idaho community interests are neither defeasible nor is the succession taxable.

*William's Estate*, 40 Nev. 241; 161 Pac. 741.

*Kohny v. Dunbar* (Idaho), 121 Pac. 544.

### 3. Gains Acquired in Foreign Country Exempt.

Still another view of the widow's civil law right to "*Gananciales*" or joint gains of the marriage is found under the laws of Cuba as applied by the courts of New York.

The Cuban courts held that the husband could not defeat his wife's right to joint gains by will and at her suit awarded her one-half of his property. The husband had become a citizen of the United States though neither he nor his wife actually resided here. By his will, drawn in English and probated in New York, he recited that he was a resident of New York and attempted to defeat his wife's right under the Cuban law. The New York courts followed the Cuban decision and allowed a deduction of one-half from all the husband's property within the State, on the ground that decedent was a resident of Cuba.

*Matter of Tirso Mesa y Hernandez*, 172 App. Div. 467; 159 Supp. 59; aff. 219 N. Y. 566.

### 4. Gains Acquired in this Country Taxable.

Still another result was reached where a couple, citizens



of France, emigrated to this country in 1885 and lived here until the husband's death in 1907 but never became citizens. All their property was acquired in this country.

The court said: "As to whether the community interest of a wife in the property of her husband under the French law is such as to constitute her the present and continuing owner during their married life of an undivided one-half interest in his personal property acquired during his residence in France we do not now deem it necessary to determine; for, as we understand, all of the decedent's property, both real and personal, of which he died seized or possessed, was acquired after the removal of himself and wife to this State. While it must be conceded that some conflict exists in the decisions of courts in foreign jurisdictions, we have no hesitancy in reaching the conclusion that as to the property acquired by the decedent here during his residence with his wife in this State, it is controlled by our laws, and upon his death it is transferred within the meaning of our tax laws."

*Matter of Majot*, 199 N. Y. 29; 92 N. E. 402.

## PART III—THE PARTIES

	PAGE
<b>A. The Decedent.</b> .....	212
1. Residence and Domicile Synonymous.....	213
2. Rules as to Domicile.....	213
3. Application of the Rules.....	214
a. Factum Without Animus.....	214
b. Animus Without Factum.....	215
c. Animus With Factum.....	217
d. As to a Married Woman.....	218
e. As to a Widow.....	218
f. As to an Army Officer.....	219
g. The Burden of Proof.....	220
h. Construction as Affected by Statute.....	221
<b>B. The Beneficiaries — Generally.</b> .....	223
1. As to Domicile.....	223
2. Relationship to Decedent.....	225
a. Grandchildren. . . . .	225
b. Step-Children. . . . .	226
c. Illegitimate Children. . . . .	226
d. Adopted Children. . . . .	226
(1) Adoption by Formal Act.....	227
(2) Mutually Acknowledged Children.....	227
e. Effect of Adoption.....	229
f. Other Relationships. . . . .	230
3. Personal Exemptions. . . . .	231
4. Exemptions to Charities.....	233
a. Charter Powers the Test.....	234
b. Purposes Must be Brought Within the Language of the Statute. . . . .	237
c. Bequests Held Exempt.....	241
d. Bequests Held Taxable.....	243
<b>C. Heirs and Legatees.</b> .....	244
1. Heirs of Real Estate.....	244
a. Lien of the Tax.....	244
b. Partition. . . . .	246
c. Equitable Conversion. . . . .	247
d. Sale to Pay the Tax.....	247
e. When Charged With a Legacy.....	248
f. As to Aliens. . . . .	248
2. Legatees of Personal Property.....	248
a. Renunciation and Assignment.....	248
b. Legacy Impressed With a Trust.....	249
c. Lapsed Legacies. . . . .	250

	PAGE
3. While the Legacy is in Custodia Legis.....	251
4. From What Fund Payable.....	252
D. Life Estates and Remainders.....	254
1. Life Estates. ....	254
a. Fund from Which the Tax is Payable.....	255
b. Charged With an Annuity.....	257
c. Power to Invade Principal.....	258
d. The New York Rule.....	259
e. With Power of Appointment.....	263
f. Tax Assessed on Theoretical, Not Actual Value.....	263
2. Remainders. ....	265
a. The Law in Force at Death of Testator Governs.....	266
b. Vested Remainders Not Taxable When Testator Died Before the Statute.....	266
c. Taxation Postponed Until Remainderman Gets Possession.....	267
d. Presently Taxable. ....	267
e. When Beneficiary is Uncertain.....	268
f. Highest Possible Rate.....	270
g. Maximum and Minimum Rate.....	276
h. Where Amount of Remainder is Uncertain.....	277
i. Under Powers of Appointment.....	278
j. Taxation at Full Undiminished Value.....	281
E. Computations. . .	283
1. The Basis of Calculation.....	283
a. Mortality Tables and Interest Rate.....	283
b. Compound Interest Rule. ....	286
c. Present Worth Rule.....	286
d. The Law of Discount.....	287
e. Law of the Chance of Death.....	288
f. Rule of the Chance of Death, as Affecting Present Worth.....	288
g. Rule for Calculating Present Value of Life Estates.....	289
2. Tables for Computing the Present Worth of Annuities.....	289
a. Actuaries Combined Table at 4%.....	291
b. Actuaries Combined Table at 5%.....	292
c. American Experience Table at 4%.....	293
d. American Experience Table at 5%.....	294
e. Carlisle Table at 5%.....	295
f. Carlisle Table at 6%.....	296
g. American Experience Table of Mortality.....	297
3. How to Use the Tables.....	298
a. The Necessary Factors.....	298
b. Ascertaining the Value.....	298
4. Application to the Problems of Inheritance Taxation.....	298

## PART III — THE PARTIES

---

### A.— THE DECEDENT.

As far as inheritance tax laws are concerned with the decedent, apart from the property he leaves behind and the personal representatives who administer it, the question of his former residence is chiefly important. The tax is generally imposed as to resident decedents upon all personal property wherever situated.

*Thompson v. Ld. Advocate*, 12 Clark & Finley 1.

As to real estate, only that within the State is ordinarily subject to tax, and some modern statutes have given tangible personal property without the State the same status as real property. The theory as to personalty is that movables follow the person and, being intangibles, have the situs of their owner.

This produces an anomaly where the statute taxes intangibles of nonresident decedents found within the jurisdiction of the State. It was thus explained in *Matter of Whiting*, 150 N. Y. 27, 30, where the court says: "Thus the Legislature intended, I think, to repeal the maxim *mobilia personam sequuntur* so far as it was an obstacle and to leave it unchanged so far as it was an aid to the imposition of the transfer tax upon all property in any respect subject to the laws of this State."

The truth is that the entire personal estate is taxed at the last domicile because it is there that the entire personal estate is administered and is within the power of the court.

*Snyder v. Brettman*, 190 U. S. 429; 23 S. Ct. Rep. 803.

The courts also seem to be getting away from this legal

fiction. The maxim, declared the Illinois court, "is the outgrowth of conditions that have long ceased to exist."

*Davis v. Upson*, 230 Ill. 327; 82 N. E. 824.

"It is a fiction due to historic conditions" declared Justice Holmes.

*Blackstone v. Miller*, 188 U. S. 189; 23 S. Ct. Rep. 277.

## 1. Residence and Domicile Synonymous.

The word "residence as used in the inheritance tax statutes is synonymous with domicile;" and although the statutes use the word "resident" the residence is determined by applying the principles relating to domicile.

*People v. Moir*, 207 Ill. 180; 69 N. E. 905.

*Matter of Martin*, 173 App. Div. 1; 158 Supp. 915. Appeal dismissed, 219 N. Y. 557; 114 N. E. 1071.

This is obviously just, for a man may have half a dozen residences and the estate of a decedent might be taxed as the estate of a resident in half a dozen States.

## 2. Rules as to Domicile.

The rules by which domicile is determined were well established before the inheritance tax statutes were generally enacted. They are:

- a. That a person must have a domicile somewhere.
- b. That he can have but one.
- c. That a married woman's domicile is that of her husband unless she lives apart from him and acquires a separate residence.
- d. That the domicile of origin is presumed to continue until a new one is acquired.
- e. That the burden of proof rests upon the party alleging a change of domicile.
- f. That to sustain this burden both a change of residence (*factum*) and intent to change the domicile (*animus*) must be shown.

“The existing domicile, whether of origin or selection, continues until a new one is acquired and the burden of proof rests upon the party who alleges a change. The question is one of fact rather than law and it frequently depends upon a variety of circumstances which differ as widely as the peculiarities of individuals.”

*Matter of Newcomb*, 192 N. Y. 238; 84 N. E. 950.

“To effect a change of domicile for the purpose of succession there must be not only a change of residence but an intention to abandon the former domicile and acquire another as the sole domicile. There must be both residence in the alleged adoption domicile and intention to adopt such place of residence as the sole domicile. Residence alone has no effect *per se*, though it may be most important as a ground from which to infer intention. Length of residence will not alone effect the change. Intention alone will not do it, but the two taken together do constitute a change of domicile.”

*Dupuy v. Wurtz*, 53 N. Y. 556.

Domicile is always a question of fact.

*Matter of Martin*, 219 N. Y. 557; 114 N. E. 1071.

### 3. Application of the Rules.

#### a. FACTUM WITHOUT ANIMUS.

Where a resident of Illinois had decided to remove from the State to the home of his daughter as soon as he had settled his business; but before he did so was taken ill and was removed to his daughter's home for care and medical treatment and died soon after, everything being left undisturbed at his old home,—held a resident of Illinois.

*People v. Moir*, 207 Ill. 180; 69 N. E. 905.

“The mere fact that a person who had resided chiefly in the city of New York, having been left a bequest of house-

hold furniture, leased a house in the city of London for the purpose of storing it, did not make him a resident of England so as to exempt his estate from a transfer tax, especially when letters written shortly before his death show that he considered himself to be an American citizen and regarded New York as his home.”

*Matter of Martin*, 173 App. Div. 1; 158 Supp. 915. Appeal dismissed, 219 N. Y. 557; 114 N. E. 1071.

Where deceased had frequently declared that he regarded New York as his home though he lived in Paris, the court said:

“The fact that he resided in Paris most of the time from 1880, while important to be considered, certainly is not controlling, because domicile may exist without actual residence but never without intent.”

*Matter of U. S. Trust Co. v. Hart*, 150 App. Div. 413; 135 Supp. 81; aff. 208 N. Y. 617; 102 N. E. 1115.

*Matter of Blumenthal*, 101 Misc. 83.

So the residence of a “commuter” was held to be his country home in New Jersey.

*Matter of McCullough*, N. Y. L. J., October 27, 1914.

#### b. ANIMUS WITHOUT FACTUM.

The deceased, an Episcopal Bishop in charge of the branch of the church in Mexico, described himself in his will as “now in the City of New York but for many years a resident of Mexico.” After making the will he returned to Mexico and resumed his labors,—held not a resident of New York.

*Matter of Riley*, 86 Misc. 628; 148 Supp. 623.

The deceased several times prior to his death declared that he was a resident of Grand Island, Vermont, and the evidence showed that he intended to move there but he never actually did so. His brother owned a home there

and died devising it to the decedent, who made all preparations to go there and live, but never went and died at his home in New York. Held, a resident of New York.

*Matter of Rutherford*, 88 Misc. 414; 150 Supp. 734; aff. 171 App. Div. 900; 155 Supp. 1138.

The will of the deceased was probated in Washington, where she expressed her desire to reside. The court said: "There is no doubt in my mind that Mrs. Morgan desired to have her legal domicile with all its advantages in Washington, D. C., and at the same time she wished to resume her original residence in New York. There is very little contention as to the fact that Mrs. Morgan at the time of her death was actually physically resident in the City of New York and that her sojourns elsewhere were not in law tantamount to residence."

*Matter of Morgan*, 95 Misc. 451; 159 Supp. 105.

The deceased lived with his family in Cuba, but to protect his property he fraudulently procured citizenship papers upon affidavits that he had lived in New York City for the necessary length of time. He drew his will in English and therein recited that he was a resident of New York and his will was probated in that State. He did all that a man could do to establish a "legal" domicile in New York without living there. Held a resident of Cuba. The adjudication as to citizenship could not be attacked and it was held that even though the deceased fraudulently established a domicile in New York for that purpose, his continued actual residence in Cuba changed it back to that domicile of origin after citizenship had been acquired.

*Matter of Hernandez*, 172 App. Div. 467; 159 Supp. 59; aff. 219 N. Y. (mem.).

So it was held that where testator had a home in New Jersey that he was a nonresident of this State, although he



described himself in his will and codicils as a resident of the city and county of New York.

*Matter of Rogers*, 83 App. Div. 642; 82 Supp. 1113; affirming N. Y. L. J., January 24, 1903.

**c. ANIMUS WITH FACTUM.**

Statements by a decedent in his will as to his domicile have an important bearing on his intent and if made within two years of death are presumed conclusive by the New York statute. But the *place of execution* is of no consequence; so, if one domiciled abroad executed a will while temporarily sojourning in this country it does not follow that it is the will of a resident.

*Moore v. Puckgaber*, 184 U. S. 593; 22 S. Ct. Rep. 521.

And this may be so even if there is a recital in the will to the contrary.

*Matter of Hernandez*, 172 App. Div. 467; 159 Supp. 59; aff. 219 N. Y. (mem.).

Deceased moved to France in 1905 and remained there until his death. There was no evidence of any intention to return. Held a nonresident.

*Matter of Rothschild*, 86 Misc. 364; 148 Supp. 368.

The deceased had been a resident of New York. For some years she was confined in an insane asylum in that State. In 1911 she was discharged, and on the next day made a trust deed of her property, reserving a life interest. She then went to California, where she resided until her death, three years later. After her death the trust deed was set aside by the California court on the ground that the donor was insane when she made it. The State Comptroller contended that if the deceased was not competent to make a deed she could not have the necessary intent to change her residence; but the Surrogate held to the contrary and was sustained on appeal.

*Matter of Balch*, 93 Misc. 419; 156 Supp. 1006; aff. 175 App. Div. 933.

Decedent had lived in an apartment hotel in New York City, where his business was. In 1910 he bought land at Long Branch and began building a house. In April, 1911, he went to live with his son at Long Branch and did not return to New York until his death the following September. Held that the intent and act were sufficient to change his residence to New Jersey.

*Matter of Wise*, 165 App. Div. 420; 150 Supp. 782.

d. AS TO A MARRIED WOMAN.

Ordinarily, in the absence of any special circumstances, the domicile of a wife is established by that of her husband.

*Matter of Brooks*, 105 Misc. 559; 174 Supp. 765.

*Matter of Bain*, 104 Misc. 508.

When a wife, though not legally separated from her husband, had lived apart from him in West Virginia for 26 years, and he never visited her save on the occasion of their daughter's marriage, and the husband lived in New York. Held, that the wife had acquired a separate domicile and was a nonresident.

*Matter of Crosby*, 85 Misc. 679; 148 Supp. 1045.

AS TO A WIDOW.

“Marriage is an international institution and more than a contract. It is, as Lord Stowell said in *Dalrymple v. Dalrymple*, 2 Hagg. Con. 63, ‘*principium urbis et quasi seminarium reipublicæ*.’ Story confirms this conception of the marital relation (Conf. Laws, § 108; Wharton, Conf. Laws, § 127, and see *Hyde v. Hyde*, 1 P. & D. 130, 133.) Consequently in all systems of law marriage creates a novel matrimonial domicile for the wife wherever her prior domicile may have been. At common law the matrimonial domicile of a wife is that of the husband at the time of her marriage. (Westlake, Priv. Internat. Law, §§ 361, 366;

Wharton, Conf. Laws, § 189; Dicey, Conf. Laws, p. 511; Bentwich, Domicile, p. 33; Merrill, Conf. Laws, 68.)

Whatever Mrs. Green's domicile of origin, or her later imputed domicile of her father's subsequent choice, may have been, it was fully supplanted by her matrimonial domicile, which was Vermont. (Story, Conf. Laws, § 46; Wharton, Conf. Laws, § 189; Dicey, Conf. Laws, pp. 640, 643; Savigny, Priv. Internat. Law, p. 56; *Dalhousie v. M'Doual*, 7 C. & F. 817; *Yelverton v. Yelverton*, 1 Sw. & Tr. 574; *Whitcomb v. Whitcomb*, 2 Cur. 351; *Hunt v. Hunt*, 72 N. Y. 217, 242.)

"The husband of decedent lived at the matrimonial domicile prior to the time of his death, and there he died and was interred in the last resting place of his respected and respectable fathers. A widow, in the absence of adequate proof to the contrary, retains the last domicile of her husband. The Roman Law on this point, '*vidua mulier amissi mariti domicilium retinet*' (D. 30, 1, 22), is cited by Story with express approval, and it is adopted in all countries without exception. It is needless to enlarge on a proposition so universally accepted in all systems of law.

"That a widow, being again *sui juris* and no longer in law or in fact *sub potestate viri*, may change her domicile (*Gout v. Zimmerman*, 5 N. C. 440; *Warrender v. Warrender*, 2 C. & F. 488) is not now questionable."

*Matter of Hettie Green*, 99 Misc. 582; aff. 179 App. Div. 890.

#### f. AS TO AN ARMY OFFICER.

The late General Frederick Dent Grant had his domicile for many years in New York City, where he held public office. He then returned to the United States army. It had been a rule that one cannot gain or lose a residence while in the army or navy. Thereafter the General had his headquarters at the Federal station on Governor's Island in New York harbor, where he lived with his family. He

was about to retire, intended to buy a house at Washington, D. C., and had shipped some of his furniture and his uniforms thither. While on his way to Washington he was taken ill and died at a hotel in New York City. The court said:

“When General Grant gave up his home in New York City and took up his permanent and only residence with his entire family at his headquarters at Governor’s Island he was thereafter actually living in Federal territory. In the judicial determination of the last domicile of a general officer in the regular military service of our Federal Government many things are entitled to consideration which would not be pertinent to a determination of the domicile of a civilian. The private courts of all the great nations do, I think, recognize a distinction in their application of the principle of domicile to the military status. I am quite aware that it is now a general rule that a soldier does not acquire a domicile in the place where he is stationed, but this is not to say that an American officer may not acquire a domicile in Federal territory of the United States if his actual residence in such Federal territory is coupled with *animus manendi* there after his duty expires. The ordinary modern rule — that a soldier does not change his domicile by foreign service — is in any event a mere presumption which may be rebutted in any case; it is not properly a rule of law. (*Ames v. Duryea*, 6 Lans. 155; aff. 61 N. Y. 609.)”

*Matter of Grant*, 83 Misc. 257; 144 Supp. 567; aff. 166 App. Div. 921; 151 Supp. 1119.

#### g. THE BURDEN OF PROOF.

The burden of proof rests upon the party asserting change of domicile.

Heaton on Surrogate’s Courts, (3d ed.), p. 78.

So, where the deceased lived part of the time in New York and part of the time in Bermuda, and made conflicting

statements as to his intent, the court said: "It appears that the decedent in or about 1904 acquired a domicile of choice in the State of New York. This being so, the onus of proving a change of domicile is upon those asserting it. The burden has not been sustained; and, therefore, the last established domicile of choice is presumed to continue."

*Matter of Norton*, 96 Misc. 152; 159 Supp. 619; aff. 175 App. Div. 981; 162 Supp. 1133.

The decedent had a house on Fifth avenue, where he lived with his wife until her death in 1905. After that he traveled much. He swore off his personal taxes in New York and made conflicting statements as to his residence on various occasions. He had a farm in Kentucky and was building a summer home at Easthampton. He was seldom at his house in New York, which was occupied by members of his family occasionally and was in charge of a caretaker. All this was held by the New York County Surrogate insufficient to sustain the burden of proof required to show a change of domicile; but the Appellate Division reversed on the facts, holding that the intent to abandon the New York domicile was clearly established, and that the estate was not taxable as that of a resident.

*Matter of Harkness*, 183 App. Div. 396; 170 Supp. 1024.

#### h. CONSTRUCTION AS AFFECTED BY STATUTE.

So many important estates escaped taxation because the decedent, while doing business in New York or coming there for pleasure, maintained a "domicile" in another State, that an attempt was made by chapter 551, L. 1916, to declare that a person should be "deemed" a resident "if and when such person shall have dwelt or shall have lodged in this State during and for the greater part of any period of 12 consecutive months in the 24 months next preceding his or her death."

This section came before the New York Surrogate's Court

for construction in the *Matter of Hettie R. Green, supra*, where the amount of tax sought to be collected by the State Comptroller is \$5,000,000, an amount equal to one-fifth of all the inheritance taxes collected by all the States in 1913.

The evidence showed that the 24 months immediately prior to her death she spent approximately as follows: She left New York City for Bellows Falls early in July, 1914, and remained there until about August 18; she returned to New York City on August 18, 1914, and stayed here until about July, 1915; from July 20 to September 1, 1915, she stayed at Bellows Falls and vicinity; she returned to New York about September 1, 1915, and stayed here until about October 1, when she went to Hoboken and remained there until November 24, 1915; from November 24, 1915, until the date of her death, July 3, 1916, she stayed in New York City.

The Comptroller contended that this brought the case squarely within the statute, but the learned Surrogate of New York county held otherwise. In the course of his opinion he said:

“I cannot, however, agree with the contention of the State Comptroller that the Legislature by the amendment above quoted intended that a person who dwelt or lodged here for a period of six months and one day of the twenty-four months immediately preceding such person’s death is to be deemed a resident of this State for the purpose of the transfer tax. Such an interpretation would result in such manifest injustice that I should be unwilling to accept it, unless the words of the statute were so clear and unequivocal as to admit of no other interpretation. It would, for instance, make a person a resident of this State, and his estate subject to taxation as such, if he lived here for six months and one day and then sold his home here, bought a home in New Jersey and went immediately to live in the New Jersey home and lived there until the date of his death, 17 months and 29 days afterwards. I will not, therefore,

assume that the Legislature intended the effect which would necessarily result from the interpretation contended for by the State Comptroller. I think that the use of the word "consecutive" shows that it was the intention of the Legislature to make it essential that a person live in this State some part of each of 12 consecutive months, and in the aggregate the greater part of such 12 months of the 24 immediately prior to his death before he would be deemed a resident for the purpose of the Transfer Tax Act. As the statute was not intended to apply to a case where the residence of the decedent was not in dispute, but only to those cases where it was contended on behalf of the estate of a decedent that he was a nonresident, this interpretation would apply only to cases where the question of residence was in dispute, and as the Legislature makes the legal effect of the facts conclusive upon the question of residence, I am inclined to that interpretation which bears less heavily upon the taxpayer."

*Matter of Green*, 99 Misc. 582; aff. 179 App. Div. 890.

## **B.—THE BENEFICIARIES — GENERALLY.**

### **1. As to Domicile.**

It is not the general practice to tax the beneficiaries of a nonresident decedent merely because they are domiciled within the State imposing the tax, and some courts have held that the State has no constitutional power to impose such a tax.

*State v. Brim*, 57 N. C. 300.

But if the testator is a resident it is not important where the beneficiaries may reside.

*Matter of Green*, 153 N. Y. 223; 47 N. E. 292.

Obviously, however, if the tax is on the right to receive, the resident legatees of a nonresident testator might be

subject to the tax. This was pointed out in *Bittinger's Estate*, 129 Pa. St. 338, 345; 18 A. 132, where the court said:

“It may be that the State might impose a succession tax upon every citizen of the State who succeeds to either real or personal estate from whatever source received.”

And the reasoning of the court in *People v. Griffith*, 245 Ill. 532; 92 N. E. 313, would seem to be in accord with the theory.

Wisconsin and Illinois seem to be the only States, thus far, which impose the tax upon beneficiaries because they reside within the State. In a recent case legatees residing in Wisconsin were held liable to the tax upon a bequest of land located in California by an evenly divided court.

*Carter's Estate*, 166 N. W. 657.

So, personal property deposited in a private bank in New Orleans was held not subject to the tax when it was devised by a nonresident testator to nonresident beneficiaries.

*Succession of Harrow*, 140 La. 570; 73 So. 683.

The question becomes important in imposing a tax upon the transfer in stock of foreign corporations owning real estate or other tangible property within the State where both the testator and the beneficiaries are nonresidents. The problem was thus solved by the Supreme Court of Illinois in *Oakman v. Small*, 282 Ill. 360; 118 N. E. 775, where the estate of Andrew Freedman, a resident of New York, held stock in foreign corporations devised to nonresident legatees. The Illinois statute attempts to impose a proportional tax on the transfer of corporate property within the State; but the court held there was no jurisdiction to impose the tax, reasoning thus:

“A judgment cannot effect title to property beyond the limits of the State except where the court may compel one who is subject to its jurisdiction to do some act in relation to the property in accordance with the laws of the State



where the property may be. The inheritance or succession tax is not levied upon the property but upon the right to take the property by descent or devise. It is not a tax upon the property itself but upon the right to succeed to it, and a proceeding to fix the tax is not a suit or controversy between the parties. As the judgment does not act upon the property, it is not essential to the jurisdiction that the property should be within the State. The State has power to impose a tax either upon a beneficiary or property within its jurisdiction. A tax upon property within the jurisdiction of the State, whether belonging to residents or not, passing by laws of the State to residents of the State, is valid. (*Greves v. Shaw*, 173 Mass. 205; 53 N. E. 372.) It is clear, however, that to enable the County Court to hear and determine whether an inheritance tax is due on the succession to property it must have jurisdiction over the beneficiary, or the property. In this case it had neither.”

It appears, therefore, that, if the beneficiaries under the will of Andrew Freedman had been residents of Illinois, they would have been subject to the tax, but, due to the fact that they were nonresidents, the court had no jurisdiction to impose it.

But the fact that a resident is executor of a nonresident's estate does not make that estate taxable.

*Commonwealth v. Peebles*, 134 Ky. 121; 119 S. W. 774.

*Dana v. Treasurer*, 227 Mass. 562; 116 N. E. 941.

## 2. Relationship to Decedent.

The nature of the relationship of beneficiaries or distributees to the decedent often involves perplexing questions under the inheritance tax laws. What the word “child” includes is matter of frequent litigation.

### a. GRANDCHILDREN.

In the construction of wills it is often important to determine whether the testator intended to include grandchildren

when he speaks of "children." They may be held to be included,

*Matter of Bender*, 44 Misc. 79; 89 Supp. 731.

Or excluded, according to the intent of the testator.

*Matter of King*, 217 N. Y. 358.

This does not, however, affect the rate of tax, as the actual relationship in that event controls unless the grandchildren have been adopted or mutually acknowledged as children.

#### b. STEPCHILDREN.

These are not included in the word "children" as used in the taxing statutes and are not so classed unless proved to have been legally adopted or to have stood in the mutually acknowledged relation of parent and child.

*Matter of Wheeler*, 115 App. Div. 616; 100 Supp. 1044.

*Matter of Hardner*, 144 App. Div. 77.

But of course the Legislature has power to class them as lineals and has done so in Pennsylvania.

*Re Randall*, 225 Pa. St. 197; 73 A. 1109.

#### c. ILLEGITIMATE CHILDREN.

Children of an illegitimate daughter are not "lineal descendants," although themselves born in lawful wedlock.

*Matter of Roebuck*, 79 Misc. 589; 140 Supp. 1107.

*Matter of Beach*, 154 N. Y. 252; 48 N. E. 516.

But illegitimate children may be so acknowledged by the father as to stand in the relationship of an adopted child.

*Wirringer v. Morgan*, 12 Cal. App. 26; 106 Pac. 425.

#### d. ADOPTED CHILDREN.

Adoption must always be pursuant to some statute, and in the absence of any such statute an adopted child is a stranger.

*Commonwealth v. Nancrede*, 32 Pa. St. 289.

*Kerr v. Goldsborough*, 150 Fed. 289; 80 C. C. A. 177.

Most of the statutes provide two methods, formal act of adoption and adoption by the mutual acknowledgment of the relation by the child and the foster parent.

(1) *Adoption by Formal Act.*

The word child includes such a child within the intent of the statute.

*Matter of Barnaby*, 104 Misc. 362; 171 Supp. 989.

It is included in the exemptions accorded to direct lineal descendants under a statute which confers "all privileges" of children upon the child so adopted.

*State ex rel. Walton v. Yturria* (Tex.), 204 S. W. 315.

*Commonwealth v. Henderson*, 172 Pa. St. 135; 33 A. 368.

*Cupple's Estate*, 272 Mo. 465; 199 S. W. 556.

*Winchester's Estate*, 140 Cal. 468; 74 Pac. 10.

*Matter of Cook*, 187 N. Y. 253; 79 N. E. 991.

A contrary view seems to have been held by the court in

*Kerr v. Goldsborough*, 150 Fed. 289; 80 C. C. A. 177.

(2) *Mutually Acknowledged Children.*

The statutes providing that children may be deemed adopted where they stood in the mutually acknowledged relation of parent and child have occasioned much litigation.

The mutually acknowledged relation was held to exist where a child of six was taken from its parents and reared by its aunt and uncle, with whom the child lived for thirty years; though she always addressed them as "aunt" and "uncle." The court said: "We think it would be difficult to find a stronger case of a person taking, without formal adoption, a friend or relative into his household standing to such person *in loco parentis* or as a parent and receives in return filial affection and service, than is presented by the case at bar. It is objected that the appellant did not address her uncle and aunt as father and mother, nor did they call her daughter. This is of but slight importance. To give effect to it would be to sacrifice conduct and acts to

appellations which are often the result of accident. Had the appellant been an entire stranger both in blood and affinity it is probable that she would have called the testator and his wife father and mother; but still other terms denoting affection might have been used."

Where the statute required that both the parents of the child must be dead before it could become the child of adopted parents by mutual acknowledgment, mutually acknowledged nieces whose mother was still living were taxed at the rate of 5%.

*Matter of Bolton*, 210 N. Y. 618; 104 N. E. 1127.

"The word 'mutual' in this statute has no abstruse signification. It means and requires reciprocity of action, correlation, and interdependence, and finds its best illustration and application in the relations existing between parents and children which are always mutual."

*Matter of Butler*, 58 Hun, 400; 12 Supp. 201; aff. 136 N. Y. 649; 32 N. E. 1016.

To the same effect is:

*Matter of Stilwell*, 34 Supp. 1123.

The fact that the beneficiaries were taken into their testator's family in their infancy, were reared, educated and provided for as children, were called by her name and adopted the same, and were treated as her children, and that the testatrix spoke of and to them as her daughters, and furnished them on their marriage with their wedding and outfit as is customary, is sufficient to bring them within the words of the statute.

*Matter of Nichol*, 91 Hun, 134; 36 Supp. 538.

Stepdaughters of a testatrix who had lived with her for a long time and called her "mother" were found to stand in the mutually acknowledged relation of parent, while

another stepdaughter who was married and did not live with her did not come within that class in

*Matter of Capron*, 10 Supp. 23.

Where a legatee was an orphan and had lived in a family of the testator since the age of six years, and was always treated like one of the family, she is one to whom the testator stood in the mutually acknowledged relation of a parent, although she was designated by the will as a “friend” and not a “daughter.”

*Matter of Wheeler*, 1 Misc. 450; 22 Supp. 1075.

The mere fact that the testator lived with his sister and her children as one family, that the household expenses were met out of a common fund to which each contributed, and that the sister died, and from that time one of the children had charge of the household affairs and they continued to live together as one family down to the death of the testator, and that the testator was very affectionate with his nieces, is not enough to show the mutually acknowledged relation of a parent, as the testator did not take them into his family and support, educate and maintain them.

*Matter of Moulton*, 11 Misc. 694; 33 Supp. 578.

#### e. EFFECT OF ADOPTION.

Where there was a bequest of a life estate to a nephew with a remainder over in case he left “no children him surviving,” and the nephew adopted a child, it was held that such child could not be deemed the child of testator’s nephew so as to defeat the rights of the remaindermen.

*Matter of Leask*, 130 App. Div. 898; 197 N. Y. 193; 80 N. E. 652.

A grandniece proved to have been adopted is taxable as a child.

*Matter of Kirtland*, 94 Misc. 58; 157 Supp. 378.

The proceeding of adoption and the relation established

is personal to the foster parent and the child. The statute gives to them all the rights to be derived from the legal relation of parent and child, including the "right of inheritance *from each other*." The right is not given, however, either expressly or by implication, to the child to inherit *through* the foster parent from his collateral kin. In other words, the child becomes heir only to the foster parent. But a stranger to the adoption proceedings, who has never recognized the existence of any artificial relation, should not have his property diverted from the natural course of descent.

*Kettell v. Baxter*, 50 Misc. 428; 100 Supp. 529.

It was held in a recent New York case that the word "sister" was not intended to include a person adopted by decedent's parents. Robert Benson described Miss Browne in his will as his niece. She was the grandchild of his mother, by whom she had been legally adopted. It was held, however, that this act of the mother's did not make her a sister of the decedent by adoption.

*Matter of Benson*, 99 Misc. 222; decision on re-argument, 164 Supp. 933.

#### f. OTHER RELATIONSHIPS.

The widow of an adopted son is "widow of a son."

*Matter of Duryea*, 128 App. Div. 205; 112 Supp. 611.

But a divorced wife of a son is not.

*Matter of Merritt*, 155 App. Div. 228; 140 Supp. 13.

A legacy to the husband of a daughter was held exempt under an early statute although the daughter died before the testator.

*Matter of Woolsey*, 19 Abb. N. C. 232.

*Matter of McGarvey*, 6 Dem. 145.

And this was so even if the husband remarried prior to the transfer to him.

*Matter of Ray*, 13 Misc. 480; 35 Supp. 481.

But, in the absence of statute, a son-in-law is a stranger.

*King v. Eidman*, 128 Fed. 815.

### 3. Personal Exemptions.

Most of the statutes allow an exemption of \$5,000 or more on bequests to near relatives and from \$500 to \$1,000 to collaterals and strangers. Though the lawmakers often use language inexcusably obscure these are generally construed to apply to each beneficiary unless specifically declared otherwise.

*McDaniel v. Hearn*, 120 Ark. 288; 179 S. W. 337.

In Ohio the exemption is estimated on the aggregate of the items in the will.

*Re Inheritance Tax*, 7 Ohio N. P. 547.

Prior to the New York amendment of 1915 and under chapter 732, L. 1911, property passing by gift in contemplation of death was regarded as a distinct transfer from the bequests under the will. This resulted in a second exemption to the same beneficiary, and the graded rates were fixed as though there were two distinct estates.

*Matter of Hodges*, 215 N. Y. 447; 109 N. E. 559.

The same rule was applied to transfers by trust deed reserving a life estate but no power of revocation.

*Matter of Meserole*, 98 Misc. 105; 162 Supp. 414.

It was held to apply to all transfers not by will or intestacy.

*Matter of Hermann*, N. Y. L. J., January, 16, 1915; aff. 168 App. Div. 964; 153 Supp. 1119.

Although the tax was to be assessed in one proceeding at the death of the donor or grantor.

*Matter of Leeds*, N. Y. L. J., April 23, 1913.

But this rule was limited by the Court of Appeals to transfers by deed, as in the Meserole case, and transfers in contemplation of death, which accrue prior to the death of the testator. So, where property passed by will which also exercised a power of appointment; held, that the exemption and graded rates were to be fixed on the basis of one transfer only — not on two.

*Matter of Winthrop*, 164 App. Div. 898; 148 Supp. 1151; aff. 214 N. Y. 712.

The same ruling was made where there was a gift to take effect at death.

*Matter of Dana*, 215 N. Y. 461.

Where there is a devise to remaindermen as a class but one exemption is allowed under the New York rule for taxation at the highest possible rate.

*Matter of Hogg*, 156 App. Div. 301; 141 Supp. 119.

And where remaindermen who may possibly succeed have already received an exemption under bequests received from other provisions of the will, no exemption is allowed, as it may turn out there will be none in addition to that already received.

*Matter of Coutts*, N. Y. L. J., December 15, 1914.

For further discussion of taxation at highest possible rate, see Remainders, *post*, p. 270.

The New York statute now gives each beneficiary but one exemption no matter whether the transfer was partly by will and partly by trust deed or gift in contemplation of death. (Ch. 664, L. 1915.)

So it was held that where there was a trust deed reserving



a life use that the transfer under the deed and the transfer under the will entitled the beneficiary to but one exemption.

*Matter of Garcia*, 183 App. Div. 712, 717; 170 Supp. 980.

When the legatee receives both a legacy presently payable and an interest in remainder the exemption is *pro rata*.

*Matter of Title Guarantee & Trust Co.*, 81 Misc. 106; 142 Supp. 1070; aff. 159 App. Div. 803.

#### 4. Exemptions to Charities.

It is a general rule that these must be expressed in the inheritance tax statute and are not to be read into it by implication.

*Barringer v. Cowan*, 55 N. C. 486.

*Leavell v. Arnold*, 131 Ky. 426; 115 S. W. 232.

*Miller v. Commonwealth*, 27 Gratt. (Va.) 110.

Under this rule such exemptions are generally confined to domestic corporations unless foreign charitable corporations are specified in the act.

*People v. Western Seamen's Society*, 87 Ill. 246.

*Re Speed*, 216 Ill. 23; 74 N. E. 806; aff. 203 U. S. 553; 27 S. Ct. Rep. 171.

*Matter of Crawford*, 148 Ia. 60; 126 N. W. 774.

*Minot v. Winthrop*, 162 Mass. 113; 38 N. E. 512.

*Alfred University v. Hancock*, 69 N. J. Eq. 470; 46 A. 178.

*Humphreys v. State*, 70 Ohio St. 67; 70 N. E. 957.

*Re Hicock*, 78 Vt. 259; 62 A. 724.

California seems to have adopted a more liberal doctrine under L. 1915, art. 1, § 7, according an exemption to foreign charitable corporations under that statute although they are not specifically mentioned in the act. But this seems against the weight of authority.

*Fish's Estate* (Cal.), 172 Pac. 390.

And the Supreme Court of Iowa held in a recent case that an educational society, incorporated under the laws of New York, was exempt from the tax in Iowa.

*Re Peterson's Will*, 166 N. W. 168.

## a. CHARTER POWERS THE TEST.

In order to determine the status of a corporation and to ascertain the purposes for which it was incorporated, recourse must be had to the act by which it was incorporated or to its charter and the statute under the authority of which it was framed.

*Matter of Watson*, 171 N. Y. 256; 63 N. E. 1109.

*Matter of White*, 118 App. Div. 869, 870; 103 Supp. 688.

*Matter of Moses*, 138 App. Div. 525; 123 Supp. 443.

*Matter of DePeyster*, 210 N. Y. 216.

The application of this principle was strikingly illustrated in the recent decision of the New York Appellate Division in *Matter of Rockefeller*, 177 App. Div. 786; 165 Supp. 154; aff. 223 N. Y. 563. Laura S. Rockefeller, the deceased wife of John D. Rockefeller, devised, through trustees, \$438,000 to the Rockefeller Foundation, and it was claimed by the Comptroller that moneys of that Foundation are not in fact applied to purposes exempt from taxation within the intent of the statute, but are used to influence legislation and in other ways of doubtful public policy. In sustaining the exemption of this bequest from taxation, the court said through Mr. Justice Page:

“The Rockefeller Foundation was incorporated by a special act of the Legislature (Laws 1913, ch. 488) ‘for the purpose of receiving and maintaining a fund or funds and applying the income and principal thereof to promote the well-being of mankind throughout the world. It shall be within the purposes of said corporation to use as means to that end research, publication, the establishment of charitable, benevolent, religious, missionary and public educational activities, agencies and institutions, and the aid of any such activities, agencies and institutions already established, and any other means and agencies which from time to time shall seem expedient to its members and trustees.’ Section 3 of said act provides: ‘No officer, members or

employee of this corporation shall receive or be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of its purposes, or as a proper beneficiary of its strictly charitable purposes.' Upon the hearing before the appraiser the Rockefeller Foundation claimed that the legacy to it was exempt from taxation, and put in evidence its charter and an affidavit of its secretary, 'That ever since the corporation was organized and up to the present time, said corporation has been engaged exclusively in carrying out its strictly charitable and benevolent purposes. \* \* \* That no officer, member or manager of said corporation receives or has received any pecuniary profit from the operation thereof. That the only persons who now receive or who have received any compensation or pecuniary profit whatsoever from the operations thereof are hired assistants and clerks, who receive reasonable compensation for the services performed by them for said corporation.'

"It is well settled that the character of a corporation may be determined by its charter. (*Matter of White*, 118 App. Div. 869; 103 Supp. 688; *Matter of Mergentime*, 129 id. 367, 374; 113 Supp. 948; aff. 195 N. Y. 572; *Matter of Loeb*, 167 App. Div. 588, 589; 152 Supp. 879; *Matter of DePeyster*, 210 N. Y. 216, 219.)

"The character of this corporation is shown from its purposes as stated in its charter: 'For the purpose of receiving and maintaining a fund or funds, and applying the income and principal thereof to promote the well-being of mankind throughout the world.' What follows relates to the means of accomplishing that purpose. The test of a charitable gift or use and a charitable corporation are the same. (*Matter of Altman*, 87 Misc. 256, 260; 149 Supp. 601.) The former has been thus defined 'a charitable use, where neither law or public policy forbids, may be applied

to almost anything that tends to promote the well doing and well being of mortal man.' (*Ould v. Washington Hospital*, 95 U. S. 303, 311; *Tilden v. Green*, 130 N. Y. 29, 46; 28 N. E. 880.) Our Court of Appeals has recently said: 'Many definitions of a charitable trust have been formulated, but all definitions that have been attempted carry the implication of public utility in its purpose. \* \* \* If the purpose to be attained is personal, private or selfish, it is not a charitable trust. Where the purpose accomplished is that of public usefulness, unstained by personal or selfish consideration, its charitable character insures its validity.' (*Matter of McDowell*, 217 N. Y. 454, 460.) In its popular acceptance a charitable corporation is one that freely and voluntarily ministers to the physical needs of those pecuniarily unable to secure for themselves, while a benevolent corporation is one that ministers to all, and the purpose may be anything that promotes the mental, physical or spiritual welfare of man. Considered in the light of the legal definitions above set forth, the Rockefeller Foundation is a charitable corporation, while considered in the popular meaning of the words it is both charitable and benevolent in its purposes.

"If, as claimed by the Comptroller, some of the funds of the corporation have been used by it for uses foreign to its corporate powers, or if it has exceeded its corporate powers in assuming to act as trustee for other charities, this would not affect its status as a charitable and benevolent corporation unless these uses were for the purpose of the personal enrichment of its officers or members. If these acts were *ultra vires*, on a proper application by the Attorney-General, the power of the Supreme Court over such corporation could be invoked, and the trustees called upon to account. But such matters are not within the jurisdiction of the Surrogate's Court, nor do they properly arise in a transfer tax proceeding."

\* \* \* The court concludes: "It has been the settled policy of the State of New York to encourage the benevolently inclined to dedicate a portion of their property to charitable and benevolent purposes for the relief of the sick or distressed, the amelioration of the condition of the unfortunate or the advancement of the physical, mental or spiritual well being of its inhabitants, and to that end to free the property thus dedicated, so long as it shall be used for those purposes, from taxation. The Transfer Tax Law, in harmony with this general purpose, has provided that bequests, devises and gifts to take effect after the death of the testator or donor shall not be diminished by a tax upon the transfer to the charitable or benevolent corporation. The decision of the learned Surrogate was right and the order should be affirmed with costs."

**b. PURPOSES MUST BE BROUGHT WITHIN THE LANGUAGE OF THE STATUTE.**

A fund to be paid to an unincorporated association is not exempt, whatever its purpose.

*Matter of Falk*, 102 Misc. 504; 169 Supp. 203.

The purpose of the gift is the purpose of the testator at the time of his death, and a bequest to a World Peace Foundation is exempt under the Massachusetts statute.

*Parkhurst v. Burrill*, 228 Mass. 196; 117 N. E. 39.

So it was held in Louisiana that a bequest to a French religious corporation was exempt.

*Succession of Ribet*, 141 La. 572; 75 So. 414.

But not a bequest to the inhabitants of a commune who "had met with reverses in the service of France or been of exemplary conduct."

*Succession of Frain*, 141 La. 932; 75 So. 847.

It is the language of the statute at the time of the death of the testator that controls.

*Matter of Daly*, 79 Misc. 586; 141 Supp. 199; aff. 215 N. Y. (mem.).

And burden of proof is on the corporation claiming exemption.

*Matter of Townsend*, 215 N. Y. 442.

Where the court said: "The respondent, having been duly served with the notice of the hearing before the appraiser and having failed to appear in response thereto, the appraiser had jurisdiction of the proceeding, and upon the record then before him could not do other than determine the tax payable upon the legacy to respondent. The title of respondent, 'The New York Exchange for Woman's Work,' was not notice to him that the corporation was one entitled to exemption, and even did the name indicate that the corporation might be charitable in its purpose, he would not be justified therefrom in assuming the other facts required by statute to secure the benefits of exemption from taxation. Neither is it incumbent upon an appraiser to devote the time necessary to investigation of corporate legatees under wills in order to ascertain the status of the same. It was the duty of the respondent to appear before the appraiser and the burden was upon it to produce evidence to show that it was entitled to exemption."

But when the purpose is clearly benevolent and the charter brings the case within the statutory provision the corporation is exempt from the tax.

*Matter of Loeb*, 167 App. Div. 588; 152 Supp. 879.

Exemption from general taxation does not exempt from transfer tax.

*Matter of McCormick*, 206 N. Y. 100; 99 N. E. 177.

*Matter of Saunders*, 77 Misc. 54; 137 Supp. 438; aff. 211 N. Y. 541.

But under a statute which exempted educational corporations receiving "State Aid" an exemption from ordinary

taxation was held in Connecticut to be "State Aid" and therefore to bring Yale College within the exemption. The court expressly repudiates strict construction of charitable and educational exemptions.

*Corbin v. Baldwin*, 92 Conn. 99; 101 A. 834.

But until such corporation is formed the title to the bequest is in the trustees and the tax must be assessed against them, subject to a motion to modify the order or refund the tax, if paid, when the corporation is formed and the funds turned over to it for the charitable purposes of the testator.

*Matter of Robinson*, 80 Misc. 458; 142 Supp. 456; aff. 212 N. Y. 548.

*Matter of Cary*, N. Y. L. J., January 20, 1914.

*Matter of Neustadter*, N. Y. L. J., August 16, 1913.

This was the practice recently adopted in New York on motion to modify the order taxing the transfer to trustees who subsequently turned over the bequest to the exempt corporation.

*Matter of Telefeyan*, N. Y. L. J., January 31, 1917.

But until such a corporation is formed and the transfer to it becomes binding on the executor, it must be assessed at the highest rate under the statute. Under this principle the court held in *Matter of Falk*, 102 Misc. 504; 169 Supp. 203, as follows:

"Section 221 of the Tax Law provides that any property devised or bequeathed to a charitable corporation shall be exempt from taxation, provided that no officer or employee shall be entitled to receive any pecuniary profit from the operations of the corporation except reasonable compensation for services in connection with its strictly charitable purposes, and provided, further, that the corporation be organized and conducted exclusively for such charitable purposes. The trustees have not yet formally decided upon the institutions or corporations to which they will pay

the remainder, and until such decision is made the court cannot determine whether the corporations or institutions that will be the recipients of the property constituting the remainder are entitled to exemption under section 221 of the Tax Law. If it should be paid to an unincorporated association it would not be exempt; if it should be given to a corporation that, while ostensibly charitable, nevertheless pays its officers a compensation in excess of the value of the services rendered by them, it would not be exempt. Until, therefore, the remainder is paid over, or an agreement is entered into by the trustees binding them to pay it to some corporation, the court cannot determine whether it is exempt from taxation, and must impose a tax at the highest rate which in any contingency would be assessable against it. (*Matter of Zborowski*, 213 N. Y. 109; 107 N. E. 44.) The order fixing tax will therefore be affirmed."

Such a corporation, so formed is not bound by the original appraisal because no notice thereof was or could be served on it.

*People v. Kellogg*, 268 Ill. 489; 109 N. E. 304.

On the other hand, the accumulations of the fund in the interim between the death of the testator and the formation of the corporation cannot be held for its benefit. That is the general rule and is forbidden by statute in New York. Such accumulations pass under the will to the residuaries or, if the will is silent, under the intestate laws. Whether or not they are taxable as a transfer from the decedent to such beneficiaries remains a nice question. Although such accumulations accrue after death they relate back to the will or pass by intestacy and do not go to the alternative legatee.

*St. John v. Andrews' Institute*, 191 N. Y. 254; 83 N. E. 981.

Under the New York Constitution the Legislature may exempt a charitable bequest retroactively.

*Church of Transfiguration v. Niles*, 86 Hun, 221; 33 Supp. 944.



Under a similar provision of the California Constitution forbidding the giving away of money of the State it is held that such legislation is void.

*Matter of Stanford's Estate*, 126 Cal. 112; 54 Pac. 259; 58 Pac. 462.

Prior to New York statute 732, L. 1911, bequests to foreign charitable corporations were taxable.

*Matter of Julia A. Smith*, 77 Hun, 134.

*Matter of Prime*, 136 N. Y. 347; 32 N. E. 1091.

*Matter of Wolfe*, 23 Misc. 439, 52 Supp. 415.

*Matter of McCartin*, N. Y. L. J., December 5, 1913.

*Matter of Crittenton*, N. Y. L. J., April 5, 1911.

Since that enactment such bequests have been exempted.

*Matter of Lyon*, 144 App. Div. 104; 128 Supp. 1004.

### c. BEQUESTS HELD EXEMPT.

Generally the courts have favored exemptions to charitable institutions, though theoretically construing the statutes strictly against them. Under the language of the specific statute in question and the particular articles of incorporation of the beneficiary the following bequests have been held exempt:

To American Baptist Foreign Missionary Society:

*Matter of Lyon*, 144 App. Div. 104; 128 Supp. 1004.

To an art gallery:

*Matter of Arnot*, 145 App. Div. 708; aff. 203 N. Y. 627.

To a bishop:

*Matter of Higgins*, N. Y. L. J., December 16, 1914.

*Matter of Kelly*, 29 Misc. 169; 60 Supp. 1005.

*Matter of Palmer*, 33 App. Div. 307; 53 Supp. 847; aff. 158 N. Y. 669; 52 N. E. 1125.

To Congregational and Baptist churches:

*Carter v. Eaton*, 75 N. H. 560; 78 A. 643.

To First Universalist Society:

*First Universalist Society v. Bradford*, 185 Mass. 310; 70 N. E. 204.

**To Methodist church :**

*Carter v. Whitcomb*, 74 N. H. 482; 69 A. 779.

**To New York Metropolitan Museum :**

*Matter of Mergantime*, 129 App. Div. 367; 113 Supp. 948; aff. 195 N. Y. 572; 88 N. E. 1125.

**To public officers as trustees for charitable purposes :**

*In re Spangler*, 148 Ia. 333; 127 N. W. 625.

**To a village in trust for indigent women :**

*Matter of Albright*, 93 Misc. 388; 156 Supp. 821.

**To found a home for the aged :**

*Matter of Graves*, 171 N. Y. 40; 63 N. E. 787.

**For a drinking fountain for horses :**

*Matter of Graves*, 242 Ill. 212; 89 N. E. 978.

**To a library :**

*Essex v. Brooks*, 164 Mass. 79; 41 N. E. 119.

**To a university :**

*Alfred University v. Hancock*, 69 N. J. Eq. 470; 46 A. 178.

**To hospitals :**

*Matter of Higgins*, 55 Misc. 175; 106 Supp. 465.

*Matter of Howell*, 34 Misc. 40; 69 Supp. 505.

**To a Masonic lodge :**

*Matter of Woolsey*, N. Y. L. J., June 5, 1915.

*Matter of Allen*, 76 Misc. 88; 136 Supp. 327.

*Morrow v. Smith*, 145 Ia. 514; 124 N. W. 316.

**To W. C. T. U. :**

*Matter of Field*, 71 Misc. 396; 130 Supp. 195; aff. 147 App. Div. 927; 131 Supp. 1114.

**To Y. M. C. A. :**

*Matter of Moses*, 138 App. Div. 525; 123 Supp. 443.

*Little v. Newburyport*, 210 Mass. 414; 96 N. E. 1032.

## d. BEQUESTS HELD TAXABLE.

On the other hand, under the particular statute in force at the date of the death of the testator and the articles of incorporation in question these bequests for charitable or allied purposes have been held taxable :

To foreign religious corporations, in New York (prior to 1911) :

*Matter of Balleis*, 144 N. Y. 132; 38 N. E. 1007.

To New York Cooper Union (1901) :

*Matter of Kucielski*, 144 App. Div. 100; 128 Supp. 768.

For “masses,” prior to amendment of statute :

*Matter of McAvoy*, 112 App. Div. 377; 98 Supp. 437.

To United States Government :

*Matter of Merriam*, 141 N. Y. 479; 36 N. E. 505; aff. 163 U. S. 625; 16 S. Ct. Rep. 1073.

To Society for Prevention of Cruelty to Animals (prior to 1912 :

*Matter of Daly*, 79 Misc. 586; 141 Supp. 199; aff. 215 N. Y. (mem.).

To New York Historical Society :

*Matter of DePeyster*, 210 N. Y. 216.

To a library (under N. Y. Statute of 1905) :

*Matter of Francis*, 121 App. Div. 129; 105 Supp. 643; aff. 189 N. Y. 554; 82 N. E. 1126.

To McAuley Water Street Mission :

*Matter of White*, 118 App. Div. 869; 103 Supp. 688.

To Home Missionary Society (N. H. Statute 1905) :

*Carter v. Whitcomb*, 74 N. H. 482; 69 A. 779.

To Trinity College (N. Y. Statute of 1887) :

*Catlin v. Trustees*, 113 N. Y. 133; 20 N. E. 864.

**To Bowdoin College:**

*Batt v. Treasurer*, 209 Mass. 459; 95 N. E. 854.

*Rice v. Bradford*, 180 Mass. 545; 63 N. E. 7.

**Bequest to trustees for education of children in Turkey:**

*Pierce v. Stevens*, 205 Mass. 219; 91 N. E. 319.

**To city for ornamental fountain:**

*Matter of Hamilton*, 148 N. Y. 310; 42 N. E. 717.

**To Vivisection Investigation League (1916):**

*Matter of Howard*, 94 Misc. 560; 157 Supp. 1114.

These citations, while not particularly instructive, are given for what they are worth. Each case must turn on the language of the statute and the provisions of the corporate charter or the purpose of the corporation proposed to be formed. As usual, the principle is simple enough and the application to concrete facts alone is difficult.

**C.— HEIRS AND LEGATEES.****1. Heirs of Real Estate.****a. LIEN OF THE TAX.**

Most of the statutes make the tax a lien on the land even as against purchasers in good faith. They also provide that the tax shall be presumed to be paid after six years.

*Matter of Strail*, 195 N. Y. 575.

But this is only as to a purchaser for value. As to the beneficiary the lien remains.

*Matter of Strang*, 117 App. Div. 796; 102 Supp. 1062.

The difficulties that beset the courts in the interpretation of the transfer tax statute is illustrated in the case of *Smith v. Browning*, where the Appellate Division held that the lien of the tax is on the entire estate and not on property transferred to any one individual. This was reversed by the

Court of Appeals, which has just decided that the lien is on the appraised value of each interest bequeathed and not upon the gross amount of several bequests to one individual, and that therefore the tax due on personal property is not a lien on the real estate.

*Smith v. Browning*, 171 App. Div. 279; 157 Supp. 71; reversed 225 N. Y. 358.

So, where the tax has not been fixed, a motion to compel a purchaser to take title will be denied.

*Kitching v. Shear*, 26 Misc. 436.

Even where the tax remains a lien as against a *bona fide* purchaser there is no personal liability upon him.

*Wilhelmi v. Wade*, 65 Mo. 39.

The lien is no bar to an action to recover the land from a third person even though it is subject to sale in default of the payment of the tax.

*Weller v. Wheelock*, 155 Mich. 698; 118 N. W. 609.

Nor does it render the title defective so as to avoid the sale when the proceeds of the sale are in the hands of the executor; in that case the lien applies to the proceeds and not to the land.

*Mandel v. Fidelity Trust Co.*, 128 Ky. 239; 107 S. W. 775.

So, where a will directs the sale of property within five years to pay certain legacies in cash, the lands themselves are not subject to a lien for payment of transfer taxes, but it attaches to the funds so realized.

*Brown v. Laurence Park Realty Co.*, 133 App. Div. 753; 118 Supp. 132.

When the representatives of the estate have paid the transfer tax on real property to which the heirs succeed out of personalty, they are subrogated for the benefit of creditors to the claim of the State to the amount of the tax so paid against those to whom the property descends.

*Hughes v. Golden*, 44 Misc. 128; 89 Supp. 769.

Where the decedent was a cotenant of land on which other cotenants had made improvements, and where each cotenant presumed and knew what the others were doing, and the improvements were made under such conditions that on partition the cotenants would be entitled to allowance for the improvements, only the balance of the interest of the decedent should be taxed, notwithstanding the fact that no proceeding for contribution had been commenced, and notwithstanding the fact that it might be claimed that no contribution would ever be asked. Still this does not justify the taxation of property that the decedent did not own, which does not pass to the heirs at law as her property.

*Matter of Wood*, 68 Misc. 267; 123 Supp. 574.

In a suit to quiet title it is held that the tax need not be paid as a condition precedent under the California practice. This seems contrary to the general rule.

*Nickel v. State* (Cal.), 175 Pac. 640.

#### b. PARTITION.

The fact that under partition proceedings the plaintiff's equitable interest in certain real estate was satisfied by an assignment to him of personal property, does not relieve him from the payment of a succession tax on his share of the estate, for the reason that he received the full value of the real estate in other property assigned to him belonging to the same estate.

*Scholey v. Rew*, 90 U. S. (23 Wall.) 331, 349.

Where a decedent owned an undivided third of an entire tract of land, partition of his interest could not have the effect of apportioning the lien and fixing a part thereof exclusively on any one lot.

*Appeal of Mellon*, 114 Pa. St. 564, 574; 8 A. 183.

## c. EQUITABLE CONVERSION.

Except in Pennsylvania the doctrine of equitable conversion is not applied in transfer tax law.

*Connell v. Crosby*, 210 Ill. 380; 71 N. E. 350.

*McCurdy v. McCurdy*, 197 Mass. 248; 83 N. E. 881.

*Matter of Bartow*, 30 Misc. 27; 62 Supp. 1000.

But where decedent's will directed that his real estate be converted into cash and so distributed, one of the beneficiaries died before the sale of the real estate, leaving a will disposing of her *interest* in her father's estate to her husband, *held*, that for purposes of the Transfer Tax Law it should be treated as personalty.

*Matter of Mills*, 86 App. Div. 555; 67 Supp. 956; 84 Supp. 1135; aff. 177 N. Y. 562; 69 N. E. 1127.

The proceeds of a partition sale held by an infant at the time of her death are personal property.

*Matter of Stiger*, 7 Misc. 268; 28 Supp. 163.

In Pennsylvania the doctrine of equitable conversion is applied. Under it the State may subject to tax transfers of real property outside the State.

*Re Hale*, 161 Pa. St. 161; 28 A. 1071.

Conversely it may operate to exempt from tax transfers of real estate in Pennsylvania belonging to a nonresident.

*Re Coleman*, 159 Pa. St. 231; 28 A. 137.

*Re Schoenberger*, 221 Pa. St. 112; 70 A. 579.

## d. SALE TO PAY THE TAX.

If the personal property is not sufficient then the real estate may be subjected to the payment of the claim of the State, and the trial court can make such order with the entire estate under its control as is necessary to satisfy any claim of the State against the estate for taxes, inheritance or otherwise.

*Mandel v. Fidelity Trust Co.*, 128 Ky. 239; 107 S. W. 775.

Where real estate was left to a life tenant with remainder to the brothers and sisters who survived, with a contingent remainder over, the court held that the property was subject to a lien for the payment of the whole tax, and that if there was no money forthcoming to pay the whole tax, it was the duty of the executor to pay it. And the court directed the sale of so much of the property as might be necessary to raise the fund to pay the tax.

*Matter of Wilcox*, 118 Supp. 254.

**e. WHERE CHARGED WITH A LEGACY.**

The statutes usually provide that where a legacy is charged upon real estate the heir must deduct the tax before paying the legacy and makes him liable personally if he fails to do so.

So, where a devise of real estate required the beneficiary to pay \$2,000 a year out of the future rents and profits to an annuitant the devisee of the real estate was required to pay the tax out of the rents and profits.

*Re Lea*, 194 Pa. St. 524; 45 A. 337.

**f. AS TO ALIENS.**

“Every alien holding real property in this State is subject to duties, assessments, taxes and burdens as if he were a citizen of the State.”

Section 16 (formerly section 8) of the New York Real Property Law, being chapter 52, Laws of 1909.

**2. Legatees of Personal Property.**

**a. RENUNCIATION AND ASSIGNMENT.**

A legatee may renounce and thus avoid the tax.

*Matter of Wolfe*, 89 App. Div. 349; 85 Supp. 949; aff. 179 N. Y. 599; 72 N. E. 1152.

*Matter of Stone*, 132 Ia. 136; 109 N. W. 465.



This seems to be the general rule, although the Pennsylvania courts arrive at the contrary and perhaps more logical doctrine.

*Re Frank*, 9 Pa. Co. Ct. 662.

*Re Small*, 11 Pa. Co. Ct. 1.

Of course the beneficiary may renounce under a power of appointment just as he may renounce under a will.

*Matter of Chauncey*, 168 Supp. 1019.

While if he assigns the legacy the tax must be paid at the same rate as though it passed to the legatee.

*Matter of Cook*, 187 N. Y. 253; 79 N. E. 991.

And it is taxable though the legatee dies before receiving it.

*Matter of Clinch*, 180 N. Y. 300; 73 N. E. 35.

#### b. LEGACY IMPRESSED WITH A TRUST.

A legacy impressed with a secret trust is held taxable against the legatee for its full value in New York. The will gave an absolute bequest of one-third of the property to Mr. Parsons, the executor. Though extrinsic evidence showed he took it in trust for the next of kin, the bequest to him was held liable to the tax. The court said:

“The question is, therefore, whether Mr. Parsons or the brother of the testatrix took the one-third interest which it is here sought to tax under the will. If Mr. Parsons, then, under the Collateral Inheritance Tax Law (ch. 713, Laws of 1887), such interest is subject to the tax. Disregarding the form of the final judgment in the Supreme Court as not binding upon the State, we find that, under the decision of the Court of Appeals, the one-third of the residuary estate passed under the will and vested in Mr. Parsons absolutely, and that no trust was imposed thereon by the will, and although it was held that, as the result of the extrinsic

evidence introduced, he took it impressed with a trust in favor of the brother, this would not relieve him from the payment of the tax.

*Matter of Edson*, 38 App. Div. 19; 56 Supp. 409; aff. 159 N. Y. 568; 54 N. E. 1092.

The contrary is held in Illinois.

*People v. Schaefer*, 266 Ill. 334; 107 N. E. 617.

And the rule has not always been strictly applied in New York. Where there was a bequest with precatory words to use the legacy for charitable purposes with an agreement by the legatee with the testator so to use it, and the agreement was fulfilled, held exempt.

*Matter of Murphy*, 4 Misc. 230; 25 Supp. 107.

In Pennsylvania it is held that a legacy on condition that certain payments should be made out of it to collaterals should be taxed as a collateral bequest, and this would seem to be the juster rule.

*Re Lauman*, 131 Pa. St. 346; 18 A. 900.

### C. LAPSED LEGACIES.

The rule is well established that a legacy or devise, even with or without words of limitation, lapses in case of the death of the legatee or devisee before the testator, in the absence of express words to prevent a lapse, or of something in the context of the will indicating a contrary intent, with the single statutory exception of a legacy to a child or other descendant of the testator, or to testator's brother or sister. (N. Y. Decedents' Estate Law, § 29, as amended by ch. 384, L. 1912.) This is, also, true where the gift is to several as tenants in common and not as a class.

*Matter of Kimberly*, 150 N. Y. 90; 44 N. E. 945.

Where there is a general residuary bequest, the legatee takes not only the property which the testator has not

otherwise disposed of, but also every part of the estate which by lapse or otherwise is not effectually bequeathed to others. Where testator gives residuary estate to certain persons named, they take, not as joint tenants, but as tenants in common, and where the testator made no change in his will after the death of a residuary, the residuary share passes to his next of kin and not to the remaining residuaries.

*Matter of Barrett*, 132 App. Div. 134; 116 Supp. 756.

In the case of a lapsed legacy the tax is on the succession as it actually occurs.

*Matter of Hulett*, 121 Ia. 423; 96 N. W. 592.

*Luydom v. Voorhees*, 58 N. J. Eq. 157; 43 A. 4.

### 3. While the Legacy is in Custodia Legis.

As we have seen, there are conflicting theories as to the estate of a legatee during the distribution and while the property of the decedent is “*in custodia legis*.”

This is still further complicated when the legatee himself dies and is a nonresident. What then is the situs of the property and what is the nature of the estate of the deceased nonresident legatee in the estate of the original testator?

In New York a distinction has been made between the unascertained right of a legatee before the settlement of an executor's accounts.

*Matter of Zefita*, 167 N. Y. 280; 60 N. E. 598.

*Matter of Phipps*, 77 Hun, 325; 28 Supp. 330; aff. 143 N. Y. 641; 37 N. E. 823.

And the situation after inventory and accounting.

*Matter of Clinch*, 180 N. Y. 300; 73 N. E. 35.

The theory being that the legatee has but a “naked right.”

Its logic was rather exploded by the Pennsylvania court

in *Milliken's Estate*, 206 Pa. St. 149; 55 A. 853. In this case a brother died in New York and his sister died a resident of Pennsylvania ten days later. The court said:

“His securities were there (in New York) deposited in a trust company; they were not in his physical possession; could not well have been; his right to custody over them, to the extent of her share, nominally passed at once to her on his death, subject only to the incident of administration in New York. Her share from that moment was subject of bargain, sale or transfer by her in Pennsylvania, subject only to her share of the expenses of administration in New York. For two weeks then she was not only in full constructive possession, she was to a degree in actual possession; that is, she could exercise every right of an owner in actual possession except that of determining the amount of charges for administration; she was the absolute, uncontrolled owner subject to a trifling lien.”

As the State's right to the tax vests at the same moment that the right of the legatee vests in his legacy, some authorities have been inclined to hold that what the legatee gets is what remains after the tax has been subtracted, and his legacy is therefore, in reality, not taxed at all.

*Finnen's Estate*, 196 Pa. St. 72; 46 A. 269.

The New York rule has been somewhat modified by the more recent decisions, and it now seems to be the doctrine that the tax accrues *after death* as soon as the interest of the legatee is ascertained, and it is then due and payable and interest thereon begins to run from that date.

*Matter of Armstrong*, N. Y. L. J., February 20, 1912.

*Matter of Gans*, N. Y. L. J., April 13, 1912.

*Matter of Sterry*, N. Y. L. J., April 30, 1912.

#### 4. From What Fund Payable.

Each legacy must bear its own share of the tax, unless the will otherwise directs; and even where it does so pro-

vide each of the distributive shares of the residuary estate must bear its proportionate burden.

*Matter of Smith*, 85 Misc. 636; 149 Supp. 24.

As to directions in the will providing for the payment of taxes on specific bequests out of the residuary estate, the Court of Appeals said in *Matter of Gihon*, 169 N. Y. 443; 62 N. E. 561:

“Therefore, though the administrator or executor is required to pay the tax, he pays it out of the legacy for the legatee, not on account of the estate. \* \* \* No one questions that where a legacy is given for a specified amount the tax must be deducted from the amount of the legacy and the balance only given to the legatee. A testator may direct that the tax on a particular legacy shall be paid out of the estate, nevertheless, in reality the tax is still paid out of the legacy, the effect of the direction of the testator being merely to increase the legacy by the amount of the tax. \* \* \* The full amount of the legacy is in law paid to the legatee and the deduction made from it and paid to the State or Federal Government is paid on account of the legatee from the legacy which he receives.”

Where the will directed that the tax on the specific legacies be paid out of the residuary and a codicil making other bequests made no such direction, held, that the provision in the will did not apply to the codicil.

*Matter of Myers*, N. Y. L. J., November 22, 1913.

Where will authorized executor to pay legacy “without any rebate or reduction whatever” and the will was executed before the enactment of the transfer tax, the court held that an action to compel payment of tax out of residuary would not lie.

*Jackson v. Tailer*, 41 Misc. 36; aff. 96 App. Div. 625; 184 N. Y. 603.

And where the will directed tax on legacies to be paid out

of the residuary, held not to include legacies given under a power of appointment vested in testator.

*Loring v. Gardner*, 221 Mass. 571; 109 N. E. 635.

The contrary was held in New York under a similar will.

*Isham v. N. Y. Assn. for the Poor*, 177 N. Y. 218; 69 N. E. 367.

In the absence of a provision in the will to the contrary the amount of the tax must be deducted from each legacy and the balance paid to the legatee.

*Sherman v. Moore*, 89 Conn. 190; 93 A. 241.

But it has been held that taxes imposed in a foreign jurisdiction must be charged against the property in the foreign State and cannot reduce the amount of a legacy payable from property within the State. "To hold that the effect of the foreign law is to reduce the legacy given by the will construed in accordance with the law of the testator's domicile is to permit the foreign law to regulate the testamentary capacity of a resident; as the foreign tax depends upon the jurisdiction over the property and is not sustainable as a regulation of the exercise of testamentary power by the citizen of another State, it follows that the tax is merely a charge upon the particular property and not upon the pecuniary legacies given by the will."

*Kingsbury v. Bazeley*, 75 N. H. 13; 70 A. 916.

## D.—LIFE ESTATES AND REMAINDERS.

### 1. Life Estates.

Whether the life estate be absolute or defeasible, as by remarriage, or *per autre vie*, whether subject to dower and curtesy, or whether it is coupled with a power to invade the principle or power of appointment, or limited by time, as surviving to a certain age; it is, in the contemplation of inheritance tax law, a present right presently valuable and taxable.

Where a life tenant bought in the remainder and the life estate was exempt under the statute it was held that she took the remainder subject to the lien of the tax.

*Harrison v. Johnston*, 109 Tenn. 245; 70 S. W. 414.

In another case, where the life tenant bought in the remainder and both the life estate and the remainder were taxable, a merger was held to have taken place, and the tax was assessed accordingly.

*Brune v. Smith*, Fed. Cas. No. 2,053.

Where the tax is levied on the entire estate and paid out of the corpus, no separate computation of the tax on the life estate and that on the remainder may be necessary.

*Re De Bourbon*, 211 Pa. St. 623; 61 A. 244.

*Appeal of Commonwealth*, 127 Pa. St. 435; 17 A. 1094.

#### a. FUND FROM WHICH THE TAX IS PAYABLE.

Where the succession tax against a life tenant is assessed against the property as a whole it is chargeable to principal.

*Bishop v. Bishop*, 81 Conn. 509; 71 A. 583.

In *Minot v. Winthrop*, 162 Mass. 113; 38 N. E. 512, the life tenant claimed that, as the remainder is also presently valued and the tax thereon paid out of the principal fund, the income of the life tenant must be thereby reduced and it was claimed that he should be reimbursed. Under the Massachusetts statute then in force the life tenant was exempt.

The court said:

“The life legacy to Mr. Winthrop is not taxable under the statute, because he is the husband of the testatrix. The question is whether his loss of income is to be made up to him out of the principal of the fund, or out of the estate generally, or is to be borne by him as a consequence of the tax levied on the legatee of the remainder. There

is nothing in the statute which authorizes any burdens to be imposed upon the legatee of the remainder in addition to the tax, and we find no warrant in the statute for taking any part of the principal of the trust fund, or of the estate generally, to make up the loss of the life tenant. There is no provision in the will for making good this loss out of the estate. We think that Mr. Winthrop must bear the loss. Perhaps a simpler way than that prescribed by the statute would have been to levy the tax at the end of the life estate upon the whole of the fund to be paid to the legatee in remainder, but the plan adopted is, we think, within the power of the Legislature, and Mr. Winthrop must be held to take his life interest subject to the law. While legacies to a husband are exempt from the tax, the consequences to a tenant for life of imposing a tax upon a legatee in remainder and deducting from the legacy must be held to have been intended, and no way of reimbursement to the tenant for life has been provided.”

Since this case many statutes require the payment of the tax out of the corpus, both as to the life tenant and the remainderman. The life tenant loses the income on the amount of the tax paid on the remainder interest and this is held to counterbalance the loss to the remainderman by reason of paying the tax on the life estate and not out of income. Under these circumstances the life tenant does not refund the tax but takes the income on the net estate less the tax on both remainder and life interest.

*Matter of Hoyt*, 44 Misc. 76; 89 Supp. 744.

*Matter of Bass*, 57 Misc. 531; 109 Supp. 1084.

*Title Guarantee & Trust Co. v. Lohrke* (N. J.), 102 A. 660.

Though one Surrogate held the tax payable from income.

*Matter of Day*, 86 Misc. 131; 149 Supp. 221.

And this is the rule in Pennsylvania.

*Re Brown*, 208 Pa. St. 161; 57 A. 360.



Where the will declared that the life estate should be “free from inheritance taxes,” it was held that the testator intended to preserve to the life tenant the income on the entire fund, and that the tax must be paid out of the residuary.

*Matter of Bingham*, 86 Misc. 566; 148 Supp. 918.

b. CHARGED WITH AN ANNUITY.

In case of an annuity the amount received by the life tenant is arbitrarily fixed and does not depend upon the amount of the principal fund.

In such case the payments must be reimbursed on the rule in:

*Matter of Tracy*, 179 N. Y. 501, 510; 72 N. E. 519.

“The method of restoring to the residuary estate the tax so paid by the trustee is as follows: Take for illustration an annuitant whose probable duration of life is ten years. The trustees would deduct from each annual payment as made one-tenth of the tax and restore it to the residuary estate. In the case at bar the death of the annuitant was suggested on the argument as having taken place since that of the testator. Any portion of the transfer tax not restored to the estate by the process indicated at the time of the annuitant’s death would be a loss which the residuary estate must sustain.”

When a life estate is charged with an annuity the present theoretical value of the annuity should be computed and deducted and not the amount necessary to set aside to produce the annuity.

*Matter of Maresi*, 74 App. Div. 76; 77 Supp. 76.

But when the will directs an annuity to be purchased from specified insurance companies there is no remainder, and the value of the annuity is, in that case, a specific bequest to be measured by its actual cost to the estate. So held

when the actual annuity cost was \$19,000 more than the appraised theoretical value. The cost was deducted from the value of the residuary estate.

*Matter of Hutchinson*, 105 App. Div. 487; 94 Supp. 354.

### c. POWER TO INVADE PRINCIPAL.

When the will gives the life tenant power to invade the principal or a trustee power so to do on behalf of the life tenant the courts have been somewhat confused as to what method of taxation should be adopted.

Originally in New York it was the practice to value the life estate and tax it and suspend taxation as to the remainder because its amount was uncertain.

*Matter of Babcock*, 37 Misc. 445; 75 Supp. 926; aff. 81 App. Div. 645; 81 Supp. 1117.

*Matter of Granfield*, 79 Misc. 374; 140 Supp. 922.

*Matter of Blynn*, N. Y. L. J., January 29, 1915; 160 Supp. 730.

*Matter of Neher*, 95 Misc. 68; 158 Supp. 454.

In the *Blynn* case the New York Surrogate said:

“This is an appeal by the State Comptroller from the appraiser’s report and the order entered thereon, upon the ground that the taxation of certain remainder interests passing under the will of decedent was improperly suspended. The executors contend that there was not improper suspension of taxation, inasmuch as the life tenant is given a power to use the principal of the fund. The power is found in the will of decedent. If it should be exercised by the executors to its fullest extent, *i. e.*, to the exhaustion of the principal, there would be nothing that could be transferred to the remainderman at the death of the life tenant. In the *Matter of Granfield*, 79 Misc. 374; 140 Supp. 922, a case very similar to the one under discussion, the court said, at page 381: ‘To tax the estate at the present time, in the event nothing should ultimately pass to the remaindermen, would be imposing a tax upon the prop-

erty and not upon the transfer, in direct conflict with the whole theory of the transfer tax.' Applying this rule to the situation herein, I find that the contention of the executors should be sustained. The appeal is therefore dismissed and the order fixing tax affirmed."

This is the rule that has been generally adopted in other States:

*People v. Freese*, 267 Ill. 164; 107 N. E. 857.

*Nieman's Appeal*, 131 Pa. St. 346; 18 A. 900.

Under this method it is obvious that if the life tenant uses part or all of the principal, part of the estate will escape taxation, but where the discretion is vested in the trustee to use part or all of the principal no remedy has as yet been discovered.

#### d. THE NEW YORK RULE.

By the decision in *Matter of Zborowski*, 213 N. Y. 109, all the prior cases in New York were overruled, and the remainder is now taxed immediately at the highest possible rate.

*Matter of Blun*, 176 App. Div. 189; 160 Supp. 731.

When the life tenant has power to use the principal at his own discretion the New York Surrogates' Court held that a base fee had been created and that the life tenant should be taxed for the entire estate.

*Matter of Post*, 96 Misc. 531.

This would seem to be overruled by the *Blinn* case, *supra*, and has not been regarded as authority in New York.

See also:

*Matter of Rogers*, 149 Supp. 462.

A trust accompanied by a discretionary power to the life beneficiary of the income, to use such part of the principal as she may demand or need for her own use or that of her

children, gives her the absolute ownership of the principal, if she so elects, and makes the trust voidable.

*Solley v. Westcott*, 43 Misc. 188; 88 Supp. 297.

There is sometimes a close question whether there is any estate at all in the remainderman, as where there is an absolute bequest with a remainder over of such portion as is not used. In such case the remainder over is void.

*Campbell v. Beaumont*, 91 N. Y. 464.

On the other hand, there may be an equally close question whether the will in fact gives the power to invade the principal. Where a devise by a testator of all "the rest, residue, and remainder" of his estate, to his wife during her life, "and after death I give and bequeath the remainder thereof as follows—" affords no basis for the contention that the words "the remainder thereof" by implication give the wife a right to use the principal, and the interests of remaindermen are presently determinable and subject to transfer tax.

*Matter of Runice*, 36 Misc. 607; 73 Supp. 1120.

A gift of the income without remainder over creates a fee.

*Hatch v. Bassett*, 52 N. Y. 359.

And a fee is created where the nature of the property is such that to use it means to consume it.

*Bell v. Warn*, 4 Hun, 406.

*Baumgrass v. Baumgrass*, 5 Misc. 8; 24 Supp. 767.

The rule adopted by the New York Surrogate in the *Post* case is that adopted by the Tax Commission of Wisconsin, citing as authority:

*Larsen v. Johnson*, 78 Wis. 300; 47 N. W. 615.

The case relied on was not a transfer tax matter but substantially held that, where there was a power to invade,

the principal vested in the life tenant and a base fee was created.

The perplexing question as to the nature of the title where there is a life use with discretion in the life tenant to use the entire principal is thoroughly discussed in Heaton on Surrogate's Courts, 3d Ed., § 280, though it should be borne in mind that the learned author was not considering it from the point of view of inheritance taxation. His discussion is as follows:

“A beneficiary given the income of a fund with the right to encroach upon the principal may in certain cases be the sole judge of the occasion and his necessities.

“Where property is willed without specifying the nature of the estate and the donee is given a power of disposition, the latter takes the absolute title to the property, but where the donee takes an estate expressly for life, with a power of disposal during life, he takes a life estate only, and whatever is left of the estate at the death of the life tenant passes to the remainderman.

*Tompkins v. Fanton*, 3 Dem. 4-7.

“Will gave the widow the right to possess and enjoy the fund during life, and if necessary to use the principal for her support. No trustee was provided for. Held, that the widow was entitled to the possession of the estate, and had the right to determine how much of the principal she should use.

*Matter of Grant*, 16 Supp. 716; re-examined, 86 Hun, 617.

*Matter of McDougall*, 141 N. Y. 21, distinguished.

“Upon payment of the fund to a widow who has the right to use part or all of the fund for support she becomes trustee for the remaindermen, and that trust devolves upon her death upon her representatives and not upon those of the first testator.

*Leggett v. Stevens*, 77 App. Div. 612; 79 Supp. 289.

“Devise of a farm limited to such part as may remain after the death of the widow. No trust power given to executor. Held, that the widow was the one to determine her necessity.

*Douglass v. Hazen*, 8 App. Div. 27; 40 Supp. 1012.

“Will gave husband use of the estate and “any part of the principal that may be needed for his support.” Held, that the husband was the sole judge of the amount of the principal needed for his support.

*Matter of Parsons*, 39 Misc. 126; 78 Supp. 975.

“Testator gave his personal estate to widow for life for support of herself and children. Held, that she should have the possession of the personal estate and should use so much as she deemed necessary for their support.

*Billor v. Loundes*, 2 Dem. 590.

“According to the cases, very similar to this, which the courts have passed upon, the person having the life estate with power of using the principal has received and retained the possession of the corpus of the estate without giving security.”

*Thomas v. Wolford*, 49 Hun, 145; 1 Supp. 610.

Judge Peckham said in *Matter of McDougall*, 141 N. Y. 21: “In other cases where it has been held that the legatee was entitled unconditionally to the possession of the legacy without security, other facts existed, such as where the language of the will made it manifest that the testator intended to give the legatee power to use in his discretion some portion of the corpus of the estate for his support.”

See also:

*Matter of Grant*, 86 Hun, 617; 16 Supp. 716.

*Matter of Trelease*, 49 Misc. 207; 96 Supp. 318; aff. 115 App. Div. 654.

*Terry v. Rector St. S. Ch.*, 79 App. Div. 527; 81 Supp. 119.

*Swarthout v. Ranier*, 143 N. Y. 499.

## e. WITH POWER OF APPOINTMENT.

This topic has already been considered at length *ante* under "Powers of Appointment." It is only necessary to add here that the power does not raise the life estate to a fee and is ignored as an asset in the hands of life tenants. It does not seem to have occurred to any appraiser that a power of appointment may be a very valuable right. On the promise to appoint creditors and thus pay their claims credit may be secured to the present worth of the remainder and was secured to the amount of many thousands of dollars in a recent case.

*Matter of Slosson*, 87 Misc. 517; 149 Supp. 797; aff. 168 App. Div. 891; 152 Supp. 690; reversed, 216 N. Y. 79.

This affords one of the most curious anomalies in transfer tax law. A life tenant with power of appointment may at once sell the remainder under a valid contract to appoint, and thus increase the cash value of the bequest by the amount received on such sale in addition to the life estate, and this amount will be free and clear from the tax, as against the life use.

This view received some support in a recent case in Massachusetts, where it was held that a life use with a general power of appointment was subject to the claims of the creditors of the donee of the power and that these must be deducted before the tax was assessed on the exercise.

*Hill v. Attorney General* (Mass.), 118 N. E. 891.

On the other hand, if the power is exercised in favor of the creditors the tax is assessed on the transfer to them under the power, following the same doctrine as that applied to transfers by will in payment of debts. See *Matter of Slosson*, *supra*.

## f. TAX ASSESSED ON THEORETICAL NOT ACTUAL VALUE.

Under the statute the value of the life estate must be

computed upon the basis of 5% interest, irrespective of the actual income of the fund, whether higher or lower.

*Matter of Potter*, 139 App. Div. 905; 124 Supp. 1126; aff. 199 N. Y. 561; 93 N. E. 378.

The theoretical value of a life estate computed upon the mortality tables and rate of interest fixed by the statute is the value at death of the testator, and not the actual duration of life, and it is the legal measure of the value of a life estate, although the life tenant only survived the testator a few months.

*Howe v. Howe*, 179 Mass. 546; 61 N. E. 225.

Though it might seem an injustice to tax the theoretical value of a life estate of a woman of 30 whose expectation of life is 35 years and whose interest in the fund is about three-fourths its entire amount at full value when she actually survives the testator only a few hours, the logic that a time must be fixed for valuation and that time is the death of the testator is immutable and has thus far been uniformly sustained.

The Supreme Court of Wisconsin reasons thus:

“The right to receive being the subject of inheritance taxation, the amount is regulated, primarily, by the value of the right. The right in the particular case has reference to the privilege to receive, for life, the yearly payments. There may be many payments, but the right is an entirety. That vested, subject to the burden on the transfer, as soon as the will was allowed. Clearly it could be valued, the transfer tax be assessed thereon, and be wholly liquidated, if such be the legislative plan.”

*State v. Widule*, 161 Wis. 389; 154 N. W. 695.

In New York the Appellate Division took another view and held that where the life tenant died shortly after the testator the actual duration of life should be the measure



of value; but this decision was reversed by the Court of Appeals in:

*Matter of White*, 208 N. Y. 64; 101 N. E. 793.

The court says, at page 68:

“The rule promulgated by the Legislature effects certainty and uniformity which the principle adopted by the Appellate Division would tend to destroy \* \* \* while in this case the rule works to the advantage of the State, inasmuch as the remainder passes to a religious corporation which is exempt from the tax, such manifestly is not its necessary or uniform result and it is not subject to criticism as harsh or unjust.”

Where there was a power to invade the principle the Surrogate deducted the actual and not the theoretical value of the life interest. The question has not since been raised, but the authority is weakened if not overruled by the subsequent cases.

*Matter of Hall*, 36 Misc. 618; 73 Supp. 1124.

## 2. Remainders.

The immediate taxation and valuation of a life estate is simple and apparently equitable, as far as any tax on the principal of a fund can be so regarded. The immediate taxation of remainder interests is neither as simple nor as equitable. As it reduces the fund the life tenant must suffer, while to make the remainderman pay for a benefit he may never live to enjoy also seems unjust. Many States give the remainderman an election to pay at once or file a bond to pay when the remainder accrues. This is more simple and does not deplete the fund, but it is a hardship on the remainderman and works to the disadvantage of the State. The collection of the tax is postponed for a generation. The expense of watching bondsmen and beneficiaries is great, the amount of labor burdensome and the financial

results not commensurate. This has led many important States to require the immediate taxation of all remainders at the highest possible rate, to be paid out of the principal fund.

a. THE LAW IN FORCE AT DEATH OF TESTATOR GOVERNS.

It is the statute in force at the death of the testator and not that in force at the date of the death of the life tenant which governs the taxation of remainders. If taxation has been suspended for any reason this rule often brings the case under obsolete provisions and antiquated authorities.

*State ex rel. Basting v. Probate Court*, 132 Minn. 104; 155 N. W. 1077.

*Matter of Mason*, 120 App. Div. 738; 105 Supp. 667; aff. 189 N. Y. 556; 82 N. E. 1129.

*Matter of Roosevelt*, 143 N. Y. 120; 38 N. E. 281.

*Matter of Meserole*, 98 Misc. 105; 162 Supp. 414.

b. VESTED REMAINDERS NOT TAXABLE WHEN TESTATOR DIED BEFORE THE STATUTE.

Remainders that vested prior to the statute are not taxable at the death of the life tenant, and a statute declaring them taxable is unconstitutional.

*Matter of Pell*, 171 N. Y. 48; 63 N. E. 789.

*Matter of O'Berry*, 179 N. Y. 285; 72 N. E. 109.

And this is so even though the remainder be defeasible.

*Matter of Smith*, 150 App. Div. 805; 135 Supp. 240.

*Matter of Hitchins*, 43 Misc. 485; 89 Supp. 472; aff. 181 N. Y. 553; 74 N. E. 1118.

The court said in the *Hitchins* case, at page 493:

“Where a vested though defeasible interest in remainder passes under a will to a remainderman on the testator’s death, though the possession does not pass until the death of the life tenant, the transfer or succession is referred to the time of the death of the testator, and if that occurred

prior to the enactment of the act taxing transfers of property, the remainder is not taxable.”

*Matter of Seaman*, 147 N. Y. 69; 41 N. E. 401.

*Matter of Stewart*, 131 N. Y. 274; 30 N. E. 184.

*Matter of Curtis*, 142 N. Y. 219; 36 N. E. 887.

*Matter of Langdon*, 153 N. Y. 6; 46 N. E. 1034.

#### c. TAXATION POSTPONED UNTIL REMAINDERMAN GETS POSSESSION.

It was formerly the rule in New York and still is in many States to postpone the taxation of the remainder until the expiration of the intermediate estate.

*McLemore v. Raines' Estate*, 131 Tenn. 637; 176 S. W. 109.

*State ex rel. Hale v. Probate Court*, 100 Minn. 192; 110 N. W. 865.

*Matter of Cager*, 111 N. Y. 343; 18 N. E. 866.

*Matter of Hoffman*, 143 N. Y. 327; 38 N. E. 311.

#### d. PRESENTLY TAXABLE.

By chapter 76, L. 1899, the rule was changed in New York so as to provide for the present taxation at the highest possible rate of all contingent remainders, with a refund in case a lower rate ultimately proves to be due. This statute has been copied in many States and is held constitutional.

*People v. Lowenstein*, 284 Ill. 126; 119 N. E. 917.

*Matter of Vanderbilt*, 172 N. Y. 69; 64 N. E. 782.

*Matter of Brez*, 172 N. Y. 609; 64 N. E. 958.

*Matter of Kennedy*, 93 App. Div. 27; 86 Supp. 1024.

The taxation is against the trustees who take the legal title. Order of Surrogate affirmed without opinion.

*Matter of Guggenheim*, 189 N. Y. 561; 82 N. E. 1127.

But where the person to whom the contingent remainder might pass is uncertain, the courts of some States still suspend taxation until the uncertainty is removed.

*Matter of Zborowski*, 84 Misc. 342; 145 Supp. 1101; rev. 213 N. Y. 109.

*Matter of Granfield*, 79 Misc. 374; 140 Supp. 922.

*State ex rel. Basting v. Probate Court*, 101 Minn. 485; 112 N. W. 878.

*Same Case*, 132 Minn. 104; 155 N. W. 1077.

Where the remainderman died before the life tenant and there was an alternative bequest to issue no title passed to the remainderman and therefore there was no transfer from him, the tax being on the transfer from the original testator.

*Matter of Radford*, 168 Supp. 1099.

e. WHEN BENEFICIARY IS UNCERTAIN.

It was held by the New York Court of Appeals in *Matter of Zborowski*, *supra*, that even when the ultimate beneficiary was uncertain the remainder was taxable at the highest possible rate. The decedent gave her residuary estate in trust to pay the income to her son Louis until he attained the age of 21 years, but if he did not live to be 21 then to his issue, if any, and in default of issue, to persons taxable at 5% rate. Under the ruling of the *Zborowski* decision the tax was imposed at the 5% rate against the trustee for the 5% class.

In discussing the legislative policy in adopting this provision the court said:

“The different statutes hereinbefore referred to contain evidence of a constant effort of the Legislature to enlarge the class of transfers immediately taxable upon the death of the transferror. The question of the Legislature’s power in that regard was set at rest by the decision of this court in *Matter of Vanderbilt*. In one aspect it may be unjust to the life tenant to tax at once the transfer, both of the life estate and of the remainder though contingent, and it may seem unwise for the State to collect taxes which it may have to refund with interest, but those considerations are solely for the Legislature, who are to judge whether they are more than offset by the greater certainty which the State thus has of receiving the tax ultimately its due under the statute. However unwise or unjust it may seem in a particular case like this for the State to collect the tax at the highest rate when in all probability the remainder will

vest in a class taxable at the lowest rate, it is the duty of this court to give effect to the statute as it is written.”

To the same effect is:

*Matter of Shearson*, 174 App. Div. 866; aff. 220 N. Y. 584.

A similar statute has been construed in like manner by the court of Illinois.

*Ayres v. Chicago Title & Trust Co.*, 187 Ill. 42; 58 N. E. 318.

When the remainder interest belongs to a decedent while the life tenant still survives, it is none the less presently taxable, as in *Matter of Huber*, 86 App. Div. 458, 461; 83 Supp. 769, where the will read: “The interest which I may have in the estate of my deceased father which interest is now subject to the life estate of my mother.”

Under the circumstances the value of the life estate of the mother at the death of the remainderman is valued and deducted from the fund, the balance being presently taxable.

So, where a decedent had an estate in a trust fund subject to the life use of a brother, the lower courts were reversed and the matter remitted to the Surrogate on this theory. The remainder interest belonged to a nonresident. The Surrogate erroneously suspended taxation until the death of the life tenant. Meantime the statute taxing transfers of nonresident property was repealed; but the court held that the remainder interest, being presently taxable, the repealing act did not avoid the tax.

*Matter of Wright*, 214 N. Y. 714; 108 N. E. 1112.

There was apparently an exception where the life estate was defeasible by remarriage because it is impossible to value the life estate by the use of the mortality tables. While the probability of death may be estimated from these tables, there are no statistics available from which the probability of remarriage may even be conjectured.

*Herold v. Shanley*, 146 Fed. 20; 76 C. C. A. 478.

New York, and most of the other State statutes, meet this difficulty by providing that the life estate shall be assessed without regard to the possibility of its being divested with permission for retaxation on the marriage of the life tenant. This is regarded as fair to the life tenant because it is her own act that defeats the estate and the remaindermen cannot complain because they get the property all the sooner.

*Matter of Plum*, 37 Misc. 466; 75 Supp. 940.

*Matter of Baugham*, 172 N. C. 170; 90 S. E. 203.

*Stengel v. Edwards* (N. J.), 98 A. 424.

#### f. HIGHEST POSSIBLE RATE.

Even though the possibility is remote that the bequest will go to anyone taxable at the higher rate the courts have upheld the provision of the statute requiring taxation at the highest possible rate. Thus, where there was a trust for 20 years to pay the income to a brother and two sisters, and if all should die during that period then to a nephew, the tax was imposed at the highest rate.

*People v. Starring*, 274 Ill. 289; 113 N. E. 627.

*People v. Donohue*, 276 Ill. 88; 114 N. E. 513.

*State v. Probate Court, St. Louis County*, 136 Minn. 342; 162 N. W. 459.

This rule seemed so drastic that the lower courts in New York attempted to modify it. In *Matter of Ogden*, 170 Supp. 630, it was held that it did not apply to the highest possible gradation of rates; and in *Matter of Hathaway*, 103 Misc. 360; 171 Supp. 190, that merely speculative possibilities were not contemplated.

These cases were overruled and the statute clearly expounded by the Court of Appeals in *Matter of Parker*, 226 N. Y. 260; reversing 186 App. Div. 300; 173 Supp. 12, where the whole subject was thoroughly considered. As this is one of the most intricate and perplexing questions in the whole law of inheritance taxation the opinion is given in full as follows:

“CARDOZO, J. By the will of James V. Parker, who died in January, 1917, property there described as ‘now in the hands and management of Robert H. Gardiner,’ is made the subject of a trust. The trustee is to apply the income to the use of Edith Stackpole Parker, wife of John Harleston Parker, during her life; on her death he is to divide the principal into as many shares as there are children of hers then living, and children then deceased leaving issue then surviving; the issue of deceased children are to receive their shares absolutely, per stirpes; the children who survive are to receive theirs in trust during their respective lives, with remainder to such persons as they may appoint by their respective wills, and, in default of such appointment, to their heirs at law. All the rest, residue and remainder of the testator’s property, including any legacy or devise which may for any reason lapse or fail, is given to John Harleston Parker, a nephew. There is thus a possible contingency that may make the principal of the trust a part of the residuary estate. That result will come to pass if no children or issue of the life tenant shall be living at her death. The property subject to the trust will then swell the estate of the residuary legatee. The value of the life interest in the trust has been appraised at \$351,475; the value of the future estate or remainder at \$143,890; and the value of the residuary estate (exclusive of the remainder) at \$455,941.66. The question to be determined is the rate at which the remainder is to be taxed.

“The command of the statute is that it shall be taxed at the highest rate that would be possible on the happening of any of the contingencies or conditions which the transfer may involve (Tax Law, § 230; Consol. Laws, ch. 60; *Matter of Zborowski*, 213 N. Y. 109). A possible contingency will add the remainder to the residuary estate. In that contingency the rate of tax that must be paid will be higher than if the remainder shall pass to legatees who are given noth-

ing else. The rate does not depend upon relationship alone. It depends also upon value. Transfers to father, mother, husband, wife or child are taxed at rates which vary from 1% to 4%, according to the value of the gift. Transfers to brother, sister, and some other classes, are taxed at rates varying from 2% to 5%. Transfers to all other persons are taxed at rates varying from 5% to 8%. (Tax Law, § 221a, as amended by L. 1916, ch. 548.) The rate is 5% on the first \$25,000; 6% on the next \$75,000; 7% on the next \$100,000; and 8% on the balance. If the gift of a remainder valued at \$143,890 is considered by itself, the tax will be \$8,222, at which it was assessed by the Surrogate. If the gift is added to the value of the residuary estate, the rate will be 8%, and the tax will be \$11,411.20.

“We think the two gifts must be combined in determining their value and measuring the tax. A possible contingency will bring them together in the ownership of the same legatee. The remainder will then be taxable at the rate of 8%. That is, therefore, the rate at which the tax must be collected now. The respondent draws some distinction between rates and grades of rates. The argument is that there are only three rates: 1% for legatees of one class; 2% for those of another; 5% for those of another; and that progressive variations are not rates, but grades. No such distinction appears in the statute. The section (§ 221a) is headed ‘rates of tax.’ In its body the same terminology is maintained. A different ‘rate’ is prescribed for the different increments of value. The argument in favor of the supposed distinction does violence, therefore, to the letter of the law. But what is more important, it does violence to the spirit. The purpose of the statute is not obscure. The purpose is to put at once into the treasury of the State the largest sum which in any contingency the remaindermen may have to pay. The remaindermen do not suffer, for when the estate takes effect in possession there will be a



refund of any excess. (Tax Law, § 230.) The life tenant does not suffer, or, at all events, not seriously, for interest is paid by the Comptroller upon the difference between the tax at the highest rate and the tax that would be due if the contingencies or conditions had happened at the date of the appraisal. (Tax Law, § 241.) If the trustees prefer, they may deposit securities of approved value and receive the accruing income. (§ 241.) To guard against shrinkage of values, the statute bids them pay the balance, if the deposit turns out to be too small. Everywhere the scheme disclosed is absolute safety for the State with a minimum of hardship for the life tenant. Tax this remainder at the rate of 8% and the State is protected against any possible contingency. Tax it at less and an uncollected balance will be owing to the State if the remainder shall pass to the residuary legatee. That is the very evil against which the statute seeks to guard. Collection is imperilled when the State must keep track of the estate through all the changes and chances of an indefinite future. The path of safety is followed when collection is made at once.

“We leave, therefore, a needless hiatus in the framework of the statute when we yield to the respondent’s argument. He admits that in a possible contingency the rate of tax on the remainder will be based on the aggregate value of remainder and residue. He denies that it is the duty of the trustee to take heed of that contingency to-day. But to say that is to ignore the statute. The trustee is to take heed of all contingencies that may affect the tax on a remainder dependent on the trust. He is not to pick and choose, allowing for some contingencies, and ignoring others. He is to heed them all or all that the will reveals. Much is made of the point that the contingent remaindermen are not personally liable for the payment of the tax. We cannot see that this affects the duty of the trustee. He is to pay the tax out of the property of the trust, but he is to pay with due

regard for the possibilities of the future. Remainders are to be appraised at their present value. (*Matter of Zborowski, supra*, at p. 113.) They are gifts, like present interests. In fixing their value, no distinction is to be drawn between the classes of remainders, whether vested or contingent. For the purpose of taxation the contingency is eliminated, and the gift is classed as absolute. (*Matter of Terry*, 218 N. Y. 218.) The value of other gifts to the same legatee must be reckoned in computing the tax when the remainder is vested. The method of computation is not different when the remainder is contingent. It is argued that in providing against contingencies we should limit ourselves to those that the testator may be supposed to have foreseen. We need not stop to inquire whether that is so. There is nothing to show that this contingency was not foreseen by the testator, and covered by his will. He might have said, in so many words, that the nephew should receive the remainder in default of issue of the life tenant. He said the same thing in effect when he provided that his nephew should be the residuary legatee. Gifts have the same value whether they are stated separately or collectively. The rate of taxation does not vary with the paragraphs of scriveners.

“This construction of the statute maintains the consistency of the law and its singleness of purpose. The State has secured itself against all contingencies, remote as well as probable. That is the dominant scheme which it is our duty to preserve. In the case before us the contingency is in all likelihood remote, and so the mind rebels a little against the tying up of money. But in other cases it may be less remote, and the need of protection greater. Whether in improbable contingencies the risk justifies the burden, it is not for us to say. That is a question for the Legislature. Our duty is done when we enforce the law as it is written. (*Matter of Zborowski, supra*, at p. 116.)

“The order should be reversed, with costs in the Appellate Division and in this court, and the matter remitted to the Surrogate for further proceedings in conformity with this opinion.”

When by the terms of a will it is possible that if all the children of testator named as remaindermen should die without issue at the same time in a single catastrophe the property would go to a contingent remainderman taxable at the 5% rate; held, that the transfer should be assessed at the higher percentage, although the possibility of the contingent remainderman taking is extremely remote.

*Matter of Hutton*, 176 App. Div. 217; 160 Supp. 223; aff. 220 N. Y. 770.

Where the will created a trust for a grandson until he was 25, if he died before 25, to his issue, with no provision in case of failure of issue, held that the fee vested in the grandson subject to be divested, therefore no remainder existed to be taxed as a construction creating an intestacy was to be avoided.

*Matter of Zitzlsperger*, 170 App. Div. 615; 156 Supp. 571.

In spite of the apparent difficulty, however, the method has worked out in practice and has been adopted in other States. In New Jersey the problem of the transfer of stock in New Jersey corporations subject to the exercise of a power of appointment came before the Court of Errors and Appeals in *Security Trust Co. v. Edwards*, 90 N. J. L. 579; 101 A. 383. The court said:

“It seems quite plain that in obeying this mandate the tax on the interests in remainder will normally await the termination of the particular estate; the counsel urge as a ground of invalidity of such tax, that it becomes impossible for the executor or trustee to transfer shares in New Jersey corporations until that time, without submitting to the requirement of section 12 for payment of full 5% tax,

which was upheld in *Senff v. Edwards*, 85 N. J. L. 67, or depositing a 5% tax with the Comptroller and taking out a waiver, as provided in chapter 58 of the Laws of 1914. These provisions appear to be aimed particularly at the transfer of the legal estate in stock to a purchaser, or the like, rather than at the particular succession of a legatee in remainder. There is also the provision contained in the last paragraph of section 3, permitting the compounding on equitable terms of a tax not presently payable, which is evidently the 'compromise' mentioned in *Senff v. Edwards*, *supra*. The statutory scheme is not obscure. If the executor wishes to sell the stock, without waiting for the specific assessment based on interests created by the will, it can be done by paying the 5% tax under section 12, or depositing it under the Act of 1914, p. 97, subject to refund of excess when later ascertained; or by paying the tax on the particular interests as presently due, and compromising that against the remainders upon an equitable ascertainment of its present worth, according to section 3. We are unable to see that this scheme gives rise to any unjust or unconstitutional discriminations. It may be said that the point is not before us except as contained in the reasons for setting aside a 5% tax on remainders presently payable."

#### g. MAXIMUM AND MINIMUM RATE.

In order to lessen the hardship of the rule as against life tenants the New York statute and those of some other States provides that the order assessing the tax should state the amount due at the highest possible rate and also the amount which would be due if the intermediate estate terminated immediately at the date of the appraisal.

As, for example, in the *Zborowski* case, *supra*, if the son Louis Zborowski had reached the age of 21 at the date of the appraisal the amount of the tax would be at the 1% rate

instead of the 5% rate assessed on the possibility that the property would go to distant relatives.

The difference between the tax assessed at the 5% rate and that which would be due at the 1% rate is required to be deposited in money or securities, and the State pays interest on the fund to the trustees, while the minimum tax goes to the treasury as part of the tax collections for the current year.

Under the complex provisions of some wills the drawing of the taxing order thus provided for has proved difficult and so vexing that one surrogate refused to make such a computation until directed to do so by the Appellate Division.

*Matter of Spingarn*, 175 App. Div. 806; 162 Supp. 695.

In ordinary cases the rule works substantial justice. It only applies where there is a trust fund subject to a life estate, and the fact that a portion of that fund is held by the State treasury, and pays interest during the life estate, places no unjust burden on the life tenant, while keeping the property intact for the remainderman. The only trouble is in the rigid application of maximum and minimum rates to small estates where the amount of bookkeeping involved costs more than the tax. For forms and further discussion, see Pt. V, pp. 478-481.

#### h. WHERE AMOUNT OF REMAINDER IS UNCERTAIN.

Where a legacy was devised to an exempt charitable corporation as long as it should continue present activities but when it ceased so to do then to heirs at law of testatrix it was held that the legacy was to be valued and exempted and taxation suspended on the contingent remainder, distinguishing *Matter of Zborowski*, on the ground that it was

not only uncertain who the remaindermen would be; but, also, whether there would be any remainder to be taxed.

*Matter of Terry*, 218 N. Y. 218; 112 N. E. 931.

#### i. UNDER POWERS OF APPOINTMENT.

There has been some confusion as to the present taxation of remainders where the life tenant has a power of appointment. When the question was first raised in New York the provision of the statute taxing the transfer in the estate of the donee of the power whether it was exercised or not was not attacked as unconstitutional, and it was held that where an absolute power of appointment is bestowed upon the beneficiary of a trust, taxation should be suspended until the remainders fall in, as the tax is on the exercise of the power by the donee as a part of the donee's estate.

*Matter of Howe*, 86 App. Div. 286; 83 Supp. 825; 13 Ann. Cas. 347; aff. 176 N. Y. 570; 68 N. E. 1118.

*Matter of Field*, 36 Misc. 279; 73 Supp. 572.

In a subsequent case it was pointed out that where the power was defeasible it might not be exercised at all and therefore taxation must be imposed in the estate of the donor at the highest possible rate because the beneficiaries might take under the will of the donor as there might be no power to exercise.

*Matter of Burgess*, 204 N. Y. 265; 97 N. E. 591.

*Matter of Gulick*, N. Y. L. J., March 20, 1914.

If a limited or contingent power of appointment is subsequently exercised, although the remainder has already been taxed in the estate of the donor, under *Matter of Burgess*, 204 N. Y. 265, the tax on the transfer by the donee of the power must none the less be imposed in the estate of the donee. The remedy, if any, is modification of the taxing order in the estate of the donor of the power.

*Matter of Buckingham*, 106 App. Div. 13; 94 Supp. 130.

*Matter of McLean*, N. Y. L. J., July 18, 1914; 170 Supp. 224.

Where a husband died exercising a power in his wife's favor and she died ten days after he did, the property vested in her and was taxable as part of her estate though she never came into possession.

*Matter of Lord*, 111 App. Div. 152; 97 Supp. 553; aff. 186 N. Y. 549; 79 N. E. 1110.

In the *Matter of Clarke*, 39 Misc. 73; 78 Supp. 869, it was held that a remainder was not presently taxable where it is limited to children of a life tenant, or her appointees by will, and she is not shown to have any children, as, in such case no transfer, defeasible or otherwise, of the remainder had yet been made.

The complexity of the situation was further increased in New York by the repeal of the provision in 1911 which taxed the transfer in the estate of the donee on failure to exercise the power. This provision had been declared unconstitutional as to powers created by decedents prior to the statute; but the repeal makes it possible that any transfer under a power of appointment may pass under the will of the donor, if the donee fails to exercise the power; and the result is that such transfers must be taxed in both estates. For a long while it was supposed that this was so only as to limited powers, under the Burgess decision, but the Appellate Division recently pointed out the situation when the taxation of an absolute power had been suspended in the estate of the donor. The question before the court was one of trustee's commissions; but the court said: "We are not passing upon the propriety of the suspension of the tax nor stating a rule to be applied when the tax is not suspended."

*Matter of Vanneck*, 175 App. Div. 363, 366; 161 Supp. 893.

The statute imposing a tax upon the exercise of the power applies where the power is exercised by deed in the same way as when the appointment is by will.

*Matter of Wendel*, 223 N. Y. 433; 119 N. E. 879.

Where the exercise of the power by the donee does not effectually dispose of all of the property the portion not disposed of must be taxed in the estate of the donor.

*Matter of Tompkins*, N. Y. L. J., August 11, 1913.

Where taxed in the estate of the donee the property must be valued as of the date of the exercise of the power.

*Matter of Tucker*, 27 Misc. 616; 59 Supp. 699.

The difficulties in which the question is involved are illustrated in the estates of William H. and Louise Tillinghast. Under the will of the former a power of appointment was given to Louise Tillinghast to be exercised "while she remains his widow." In default of the exercise of the power the property passed to residuary legatees. It was taxed in the estate of William H. Tillinghast on the theory that the power was "limited," as Mrs. Tillinghast might remarry and not exercise it. The tax was paid at the 5% rate. Mrs. Tillinghast did not remarry, but died leaving a will exercising the power in favor of children by her first husband who were in the 1% class as to her and in the 5% as to W. H. Tillinghast, her second husband.

The exercise of the power was taxed in her estate at 1%, but the court held that the tax paid out of the William H. Tillinghast estate could not be applied nor could the transfer under the power escape taxation because there had been a tax paid in the estate of the donor.

*Matter of Tillinghast, Louise*, 94 Misc. 50; 157 Supp. 382; aff. 184 App. Div. 886.

A motion was then made to modify the order made more than six years before taxing the fund in the William H. Tillinghast estate. The Comptroller opposed the motion on the ground that the statute of limitations had run and also on the ground that the remedy was by appeal from the



original order. The Surrogate decided against him and modified the original taxing order.

*Matter of Tillinghast, W. H.*, 94 Misc. 76; 157 Supp. 379; aff. 184 App. Div. 886.

But the tax is assessed upon the exercise of the power in the estate of the donee in any event notwithstanding its payment in the estate of the donor. The remedy must be sought in that estate.

*Matter of McLean*, 170 Supp. 224.

*Matter of Lewisohn*, 171 Supp. 958.

*Matter of Hathaway*, 171 Supp. 190.

The valuation of a remainder subject to a power of appointment is not binding upon the appraiser in the taxation of the estate of the donee of the power upon its exercise for the remainder is treated as a part of the estate of the donee.

*Matter of Lewisohn*, 171 Supp. 958.

#### j. TAXATION OF FULL UNDIMINISHED VALUE.

The New York statute and those of many other States provide as follows in regard to the taxation of contingent remainders where taxation has been suspended or postponed until the remaindermen come into possession:

“Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.”

This provision was held retroactive in

*Matter of Hosack*, 39 Misc. 130; 78 Supp. 983.

and not retroactive in

*Matter of Buckham*, N. Y. L. J., January 10, 1912.

To illustrate: A life estate in \$100,000 to a widow of 30 is valued on the 5% basis at \$75,421.25 and taxation on the value of the remainder presently worth \$24,578.75 is suspended. When the remainder falls in, that is, when the life tenant dies, the tax must be paid on the full \$100,000. This has caused much litigation on the ground of double taxation.

But if the remainder is taxed at 1%, the tax presently payable is \$245.78, which is the present worth of \$1,000 at the end of the life tenant's expectation of life. Therefore, if the tax is suspended or postponed to the death of the life tenant, it should pay the tax on the full amount which would be, at 1%, \$1,000.

This proposition has been sustained by the authorities.

*Matter of Eno*, N. Y. L. J., April 24, 1913.

*Matter of Seligman*, 170 App. Div. 837; 156 Supp. 648; aff. 219 N. Y. 656; 114 N. E. 853.

*Matter of Bucki*, 172 App. Div. 455; 158 Supp. 657.

*Matter of Dickey*, 174 App. Div. 467; 160 Supp. 646.

In affirming the *Seligman* case Judge Pound, writing for the Court of Appeals, said:

“When taxation has been held in abeyance the contingent or defeasible estate in expectancy is to be appraised at its full value when the persons entitled thereto shall come into the beneficial possession or enjoyment thereof. Thus in the *Terry* case (218 N. Y. 218), if the legacy to the McGregor home should revert to the heirs, it would then be appraised and taxed at its full value without any deduction. In such a case, because we cannot presently carve out of one total the value of the present and future estates, the Legislature has established the rule of giving both estates the highest possible value as the persons entitled thereto respectively take possession. In the case at bar the entire future interest of the sons might, in the first place, have been appraised for taxation and the tax then paid on such

valuation; but, as payment was postponed, the tax should now be upon the full value.”

The importance of this provision in the statute is illustrated in *State ex rel. Basting*, 101 Minn. 485; 112 N. W. 878, where there was a trust for three daughters for ten years. The tax was suspended because it was uncertain whether the daughters would survive. This was in 1905. In 1916 the ten years had expired and the matter again came before the court in *State ex rel. Basting*, 132 Minn. 104; 155 N. W. 1077. There was no provision in the law in 1905 for taxing at full undiminished value. The court valued the estate as it existed in 1916 and then taxed the present worth of that sum at the death of the testator in 1905. Obviously the State lost the interest on the tax for ten years by this method.

“Full undiminished value” means the value as of the death of the testator undiminished by any deduction for the life estate; it does not mean increase in the value of the estate since the death of the testator.

*Matter of Lawson*, N. Y. L. J., January 3, 1914.

## E.— COMPUTATIONS.

### 1. The Basis of Calculation.

#### a. MORTALITY TABLES AND INTEREST RATE.

Computations of the value of life estates and annuities, remainders, dower, curtesy and the like are by the statutes required to be made by the judge of probate or the insurance department and are invariably referred to experts whose computations are conclusive as to method.

*Matter of Davis*, 91 Hun, 53; 36 Supp. 822.

The tables furnish a method, more or less arbitrary, for the ascertainment of values not otherwise possible to be fixed. But after all they are mere computations.

*Minton v. Burrill*, 229 Mass. 140; 118 N. E. 274.

“The tables of mortality are at best only slight evidence of the expectancy of life of any particular person to be considered in connection with the proof of his health, constitution, habits and mode of living. (*Schell v. Plumb*, 55 N. Y. 292.) Such tables show only the average length of life among the classes whose lives are taken into consideration in preparing the tables. There are several tables, which differ quite widely, and it goes without saying that in any given case the habits and manner of living of the individual may be totally different from those considered in preparing the tables.”

*Hartley v. Eagle Insurance Co.*, 222 N. Y. 178, 186.

But the inheritance tax statutes all provide for the valuation of life estates and remainders upon the basis of some mortality table, and these tables may be referred to in the statute without setting them forth, as they merely prescribe a rule for estimating values.

*Union Trust Co. v. Durfee*, 125 Mich. 487; 84 N. W. 1101.

But the attorney is usually expected to advise his client what the tax on such estates is likely to be and no lawyer likes to feel helpless in the hands of the mathematician, though he usually is so.

By the use of prepared tables the more simple calculations may be made by any attorney, given the rate of interest, and the table of mortality prescribed in the particular State.

These mortality tables, known as the Actuaries' Combined Experience table, the American Experience table and the Carlisle table of mortality, are based on the experience of insurance companies in the observation of a large number of lives and were originally prepared for insurance purposes. Lawyers and judges found them available for the valuation of life estates and remainders for the purpose of inheritance taxation.

The expectation of life from year to year being approximated by these tables of mortality, the computation of the present worth of an annual income at a given rate of interest becomes possible.

The first step is to know what table of mortality is used in a particular State and what is the rate of interest upon which the computation is to be based.

This can be ascertained by the following table:

#### KEY TABLE

Showing rate of interest and Mortality Table used in the Different States for Inheritance Tax Cancellations.

State	Rate of Interest	Table of Mortality Used and Initial Referring to Table
Arkansas . . . . .	5	B Actuaries' Combined Table.
Arizona . . . . .	4	A Actuaries' Combined Table.
California . . . . .	5	B Actuaries' Combined Table.
Colorado . . . . .	5	B Actuaries' Combined Table.
Connecticut . . . . .	5	D American Experience Table.
Delaware . . . . .	6	American Experience Table.
Georgia . . . . .	6	F Carlisle Table.
Hawaii . . . . .	5	D American Experience Table.
Idaho . . . . .	5	B Actuaries' Combined Table.
Illinois . . . . .	5	E Carlisle Table.
Indiana . . . . .	5	D American Experience Table.
Iowa . . . . .	4	A Actuaries' Combined Table.
Kansas . . . . .	5	D American Experience Table.
Kentucky . . . . .	5	Dr. Wigglesworth's Table.
Louisiana . . . . .	6	American Experience Table.
Maine . . . . .	4	A Actuaries' Combined Table.
Maryland . . . . .	6	F Carlisle Table.
Massachusetts . . . . .	4	C American Experience Table.
Michigan . . . . .	5	D American Experience Table.
Minnesota . . . . .	5	D American Experience Table.
Missouri . . . . .	5	B Actuaries' Combined Table.
Montana . . . . .	7	Actuaries' Combined Table.
Nebraska . . . . .	4	A Actuaries' Combined Table.
Nevada . . . . .	7	American Experience Table.
New Hampshire . . . . .	4	A Actuaries' Combined Table.
New Jersey . . . . .	5	D American Experience Table.
New York . . . . .	5	D American Experience Table.
North Carolina . . . . .	5	D American Experience Table.

State	Rate of Interest	Table of Mortality Used and Initial Referring to Table
North Dakota .....	6	American Experience Table.
Ohio .....	5	B Actuaries' Combined Table.
Oklahoma .....	5	D American Experience Table.
Oregon .....	4	A Actuaries' Combined Table.
Pennsylvania .....	6	F Carlisle Table.
Rhode Island .....	5	D American Experience Table.
South Dakota .....	5	D American Experience Table.
Tennessee .....	6	F Carlisle Table.
Texas .....	4	A Actuaries' Combined Table.
Utah .....	3½	C American Experience Table.
Vermont .....	3½	C American Experience Table.
Virginia .....	6	F Carlisle Table.
Washington .....	4	A Actuaries' Combined Table.
West Virginia .....	....	Table prescribed by chap. 65, § 17, W. Va. Code, 1913.
Wisconsin .....	5	D American Experience Table.

#### \*b. COMPOUND INTEREST RULE.

To ascertain the value of the principal at the end of any given number of years compounded annually at a given rate of interest:

*Add the rate of interest to the principal and raise this sum to the power equal to the number of years.*

Example: What is the value of \$100 at the end of five years compounded annually at the rate of 5%?

First year —  $\$100 + 5 = 105$ .

Second year —  $105 \times 105 = 110.25$ .

Third year —  $110.25 \times 105 = 115.76$ .

Fourth year —  $115.76 \times 105 = 121.55$ .

Fifth year —  $121.55 \times 105 = 127.63$ .

Answer:

The value of \$100 at the end of five years, compounded annually at the rate of 5%, is \$127.63.

#### c. PRESENT WORTH RULE.

To find the present worth of any amount due at any future date at a given rate of interest:

---

\* NOTE.—For Federal tables and computations, see pp. 508-601.

*Divide the amount by itself plus the accumulation compounded annually at the given rate of interest.*

Example:

To find the present worth of \$100 payable in five years at 5% compounded annually?

We know from the previous example that \$100 compounded annually at 5% for five years will produce \$127.63 at the end of that period.

Under the above rule  $\$100$  divided by  $\$127.63 = \$78.35$ .

Answer:

The present worth of \$100 payable in five years with interest at 5% is \$78.35.

In the same way the present worth of \$100 payable in one year with interest at 5% is \$95.2381.

#### d. THE LAW OF DISCOUNT.

Employing the two previous rules, we find that the present worth of \$100 payable in five years at 4% is \$82.19, while at 6% the present worth is \$74.7258.

Obviously the higher the discount the lower the present worth, the lower the discount the higher the present worth.

It is important to bear this in mind as it is a common error to suppose that the value of a life estate may be computed by multiplying the theoretical expectation of life by the annual income — which is an egregious error leading to absurd results.

For example, the expectation of life of a widow of 30 is 35 years. If she has a life estate in \$100,000 her annual income at 5% is \$5,000. So, if \$5,000 be multiplied by the expectation of life, 35 years, the result is \$175,000 as the value of a life interest in \$100,000! Wrong and absurd as this method is, it has too frequently been employed in actual practice in estimating dower, etc., through sheer ignorance.

## e. LAW OF THE CHANCE OF DEATH.

But the present worth of \$100 payable at the end of one year and annually thereafter is affected by another element when the beneficiary is a life tenant or annuitant. He may never live the year out to get his \$100.

His chance of dying before it is payable therefore becomes another element in ascertaining its present worth, and here we must use the mortality table.

And here we are met with another error almost universal. The tables give the average expectation of life as a matter of information, but this average expectation has little to do with the calculation of the value of a life estate or annuity, though derived from the same tables.

By referring to the appended American Experience table of mortality, Table G, it will be seen that it starts with 100,000 persons living at 10 years of age and shows how many may be expected to die within the year and how many will survive to the age of 11 and so on until 95 years.

## f. RULE OF THE CHANCE OF DEATH AS AFFECTING PRESENT WORTH.

Assume a life tenant or annuitant is 70 years of age. The American Experience table of mortality, Table G, shows that of 100,000 persons living at the age of ten, 38,569 will survive to the age of 70; that 2,391 will die during the following year; and that 36,178 will be living at the age of 71.

The chance of a life tenant of 70 living to receive his annual income at the end of the year when he will be 71 is therefore expressed by this fraction.

36178 — living at 71.

38569 — living at 70.





### g. RULE FOR CALCULATING THE PRESENT VALUE OF LIFE ESTATES.

As we have seen by sub. c, the present worth of \$100 payable at the end of one year is \$95.2381.

But to a life tenant of 70 this present worth must be reduced by the chance of death within the year. His present worth of \$95.2381 must be reduced by the fraction of  $\frac{36178}{38569}$  which represents his chance of living to get the money.

So, \$95.2381 divided by  $\frac{36178}{38569} = \$0.00247$ , and this multiplied by 36178 gives \$89.36 as the present worth of \$100 payable to an annuitant of 70 at the end of the year.

The present worth of the installment payable to the annuitant of 70 at the end of two years is worked out in the same way. The number living at the end of two years of persons aged 70 is 33730 out of the 38569 and the chance that the annuitant of 70 will live to get his second yearly payment of \$100 is expressed by the fraction  $\frac{33730}{38569}$

The present worth of the installment payable to the annuitant of 70 at the end of two years is worked out in the to be added to the present worth of one year's income; and so on to the end of the table.

It is needless to proceed further. The principle being understood, we may now employ the tables in which the whole problem is worked out by the actuaries.

By referring to the American Experience table, Table D, of the present value of one dollar at various ages calculated as above, we find that the present value of an income of one dollar a year at 5% to an annuitant of 70 years of age is \$5.9802 and of an income of \$100 the value would be \$598.02.

## 2. Tables for Computing the Present Worth of Annuities.

The first table of mortality still in use was published by Dr. Price in 1771 as the "experience of life in Northamp-

ton." It is not employed in making inheritance tax calculations, however.

In 1789 Dr. Edward Wigglesworth of Harvard University prepared a mortality table which is now used for inheritance tax purposes only in the State of Kentucky.

In 1815 Dr. Joshua Milne prepared and published the Carlisle tables of mortality.

In 1838 a committee of English actuaries prepared a table of mortality based on the combined experience of seventeen insurance companies.

In 1868 Sheppard Homans prepared the American Experience table based upon the experience of the Mutual Life Insurance Company.

The last three tables, as we have seen, are still in general use in the different States.

#### THE TABLES

The present worth of an annuity of one dollar at any given age at 4%, 5%, and 6% is shown by the following tables, to which reference is made by the table showing what standard is adopted in the several States:

Table A. Actuaries' combined table at 4%.

Table B. Actuaries' combined table at 5%.

Table C. American experience table at 4%.

Table D. American experience table at 5%.

Table E. Carlisle table at 5%.

Table F. Carlisle table at 6%.

Table G. American experience table of mortality and expectation of life.

TABLE A

ACTUARIES' COMBINED EXPERIENCE TABLE ON BASIS OF 4 PER  
CENT INTEREST

Age	Mean redemption period	Annuity, or present value of one dollar due at the end of each year during the life of a person of specified age	Reversion, or present value of one dollar due at the end of the year of death of a person of specified age	Age	Mean redemption period	Annuity, or present value of one dollar due at the end of each year during the life of a person of specified age	Reversion, or present value of one dollar due at the end of the year of death of a person of specified age
0...	23.179	\$14.72829	\$0.39507	50...	18.113	\$12.47032	\$0.48191
1...	30.552	17.30771	0.29586	51...	17.527	12.17919	0.49311
2...	35.626	18.69578	0.24247	52...	16.947	11.88408	0.50446
3...	37.572	19.15901	0.22465	53...	16.372	11.58531	0.51595
4...	38.702	19.41226	0.21491	54...	15.804	11.28325	0.52757
5...	39.352	19.55301	0.20950	55...	15.243	10.99789	0.53931
6...	39.654	19.61731	0.20703	56...	14.689	10.66982	0.55116
7...	39.691	19.62502	0.20673	57...	14.143	10.35931	0.56310
8...	39.625	19.61097	0.20727	58...	13.603	10.04630	0.57514
9...	39.264	19.53413	0.21022	59...	13.072	9.73131	0.58726
10...	38.891	19.45359	0.21332	60...	12.549	9.41474	0.59943
11...	38.507	19.36943	0.21656	61...	12.029	9.09765	0.61163
12...	38.113	19.28184	0.21993	62...	11.532	8.78052	0.62382
13...	37.710	19.19065	0.22344	63...	11.039	8.46412	0.63600
14...	37.298	19.09590	0.22708	64...	10.557	8.14888	0.64812
15...	36.877	18.99764	0.23086	65...	10.088	7.83552	0.66017
16...	36.447	18.89569	0.23478	66...	9.630	7.52476	0.67212
17...	36.010	18.79010	0.23884	67...	9.185	7.21699	0.68396
18...	35.565	18.68070	0.24305	68...	8.753	6.91298	0.69565
19...	35.113	18.56751	0.24740	69...	8.333	6.61301	0.70719
20...	34.652	18.45038	0.25191	70...	7.926	6.31716	0.71857
21...	34.186	18.32932	0.25656	71...	7.532	6.02612	0.72976
22...	33.711	18.20416	0.26138	72...	7.151	5.74003	0.74077
23...	33.230	18.07471	0.26636	73...	6.782	5.45928	0.75157
24...	32.742	17.94097	0.27150	74...	6.425	5.18402	0.76215
25...	32.248	17.80274	0.27682	75...	6.081	4.91463	0.77251
26...	31.747	17.65984	0.28231	76...	5.749	4.65125	0.78264
27...	31.239	17.51224	0.28799	77...	5.428	4.39383	0.79254
28...	30.725	17.35968	0.29386	78...	5.119	4.14286	0.80220
29...	30.205	17.20225	0.29991	79...	4.823	3.89858	0.81150
30...	29.678	17.03961	0.30617	80...	4.537	3.66071	0.82074
31...	29.147	16.87176	0.31262	81...	4.262	3.42900	0.82965
32...	28.608	16.69846	0.31929	82...	3.995	3.20258	0.83836
33...	28.067	16.51964	0.32617	83...	3.737	2.98024	0.84691
34...	27.516	16.33503	0.33327	84...	3.484	2.76106	0.85534
35...	26.961	16.14437	0.34060	85...	3.236	2.54366	0.86371
36...	26.401	15.94755	0.34817	86...	2.992	2.32795	0.87200
37...	25.834	15.74427	0.35599	87...	2.752	2.11384	0.88024
38...	25.263	15.53421	0.36407	88...	2.517	1.90115	0.88842
39...	24.685	15.31722	0.37241	89...	2.286	1.69107	0.89650
40...	24.101	15.09295	0.38104	90...	2.062	1.48540	0.90441
41...	23.511	14.86102	0.38996	91...	1.845	1.28432	0.91214
42...	22.915	14.62122	0.39918	92...	1.637	1.09024	0.91961
43...	22.313	14.37356	0.40871	93...	1.442	0.90647	0.92667
44...	21.708	14.11860	0.41852	94...	1.263	0.73687	0.93320
45...	21.103	13.85713	0.42857	95...	1.103	0.58435	0.93906
46...	20.499	13.58958	0.43886	96...	0.975	0.46182	0.94378
47...	19.896	13.31698	0.44935	97...	0.877	0.36698	0.94742
48...	19.298	13.03942	0.46002	98...	0.746	0.24038	0.95229
49...	18.703	12.75716	0.47088	99...	0.500	0.00000	0.96154

TABLE B

ACTUARIES' COMBINED EXPERIENCE TABLE WITH INTEREST  
AT 5 PER CENT PER ANNUM.

AGE	\$1 annuity value	Present worth of remainder	AGE	\$1 annuity value	Present worth of remainder
10.	16.5559	.164006	55.	10.0775	.472499
11.	16.5020	.166572	56.	9.8157	.484966
12.	16.4455	.169264	57.	9.5505	.497596
13.	16.3862	.172087	58.	9.2818	.510393
14.	16.3241	.175042	59.	9.0100	.523335
15.	16.2593	.178127	60.	8.7355	.536407
16.	16.1917	.181349	61.	8.4592	.549563
17.	16.1212	.184707	62.	8.1816	.562782
18.	16.0476	.188209	63.	7.9033	.576032
19.	15.9711	.191854	64.	7.6249	.589292
20.	15.8913	.195651	65.	7.3469	.602530
21.	15.8085	.199598	66.	7.0700	.615716
22.	15.7222	.203703	67.	6.7946	.628829
23.	15.6325	.207977	68.	6.5215	.641834
24.	15.5392	.212418	69.	6.2509	.654718
25.	15.4422	.217037	70.	5.9831	.667473
26.	15.3414	.221842	71.	5.7185	.680077
27.	15.2364	.226837	72.	5.4574	.692504
28.	15.1274	.232030	73.	5.2003	.704748
29.	15.0141	.237425	74.	4.9473	.716795
30.	14.8963	.243033	75.	4.6988	.728627
31.	14.7740	.248856	76.	4.4550	.740235
32.	14.6469	.254907	77.	4.2160	.751619
33.	14.5150	.261191	78.	3.9821	.762756
34.	14.3779	.267719	79.	3.7538	.773626
35.	14.2354	.274506	80.	3.5308	.784247
36.	14.0873	.281559	81.	3.3129	.794621
37.	13.9333	.288892	82.	3.0993	.804793
38.	13.7730	.296522	83.	2.8890	.814812
39.	13.6064	.304458	84.	2.6809	.824714
40.	13.4329	.312718	85.	2.4739	.834575
41.	13.2523	.321321	86.	2.2678	.844389
42.	13.0641	.330280	87.	2.0626	.854163
43.	12.8684	.339600	88.	1.8590	.863905
44.	12.6656	.349258	89.	1.6553	.873557
45.	12.4562	.359226	90.	1.4562	.883040
46.	12.2408	.369487	91.	1.2609	.892335
47.	12.0200	.380002	92.	1.0718	.901339
48.	11.7939	.390767	93.	.8923	.909888
49.	11.5627	.401775	94.	.7262	.917797
50.	11.3265	.413024	95.	.5765	.924929
51.	11.0855	.424502	96.	.4560	.930667
52.	10.8398	.436200	97.	.3628	.935102
53.	10.5898	.448105	98.	.2881	.941019
54.	10.3357	.460204			

## TABLE C.

AS ISSUED BY TAX COMMISSIONER OF MASSACHUSETTS.  
 AMERICAN EXPERIENCE TABLES.—DISCOUNTED AT 4 PER  
 CENT COMPOUND INTEREST.

[Explanation: To find the present worth of the life estate of a person, multiply the *principal* of the fund by the figure in column 1 opposite the age of the person at the nearest birthday. Example: A, who is 26 years, 4 months old at the death of B, is given by B's will a life estate in property valued at \$20,000. Solution: Opposite age 26 in column 1 is .7143; multiply .7143  $\times$  \$20,000 = \$14,286.]

To find the present worth of an annuity of a given amount for life, multiply the annuity by the figure in column 2 opposite the age at the nearest birthday of the person receiving the annuity. Example: A, who is 25 years, 7 months old at death of B, is given by B's will an annuity of \$800 for life. Solution: Opposite age 26 in column 2 is 17.857; multiply 17.857  $\times$  \$800 = \$14,285.60.]

Age	Column 1, life estates	Column 2, an- nuities	Age	Column 1, life estates	Column 2, an- nuities	Age	Column 1, life estates	Column 2, an- nuities
10...	.7766	19.414	40...	.6177	15.443	70...	.2523	6.307
11...	.7737	19.343	41...	.6088	15.220	71...	.2397	5.993
12...	.7708	19.269	42...	.5995	14.988	72...	.2274	5.685
13...	.7677	19.192	43...	.5900	14.749	73...	.2153	5.383
14...	.7645	19.112	44...	.5801	14.502	74...	.2034	5.086
15...	.7611	19.028	45...	.5699	14.248	75...	.1918	4.794
16...	.7577	18.942	46...	.5594	13.985	76...	.1802	4.505
17...	.7540	18.851	47...	.5486	13.714	77...	.1688	4.219
18...	.7503	18.757	48...	.5374	13.436	78...	.1574	3.936
19...	.7464	18.660	49...	.5260	13.151	79...	.1462	3.656
20...	.7423	18.558	50...	.5143	12.858	80...	.1352	3.380
21...	.7388	18.452	51...	.5002	12.559	81...	.1243	3.108
22...	.7337	18.342	52...	.4902	12.255	82...	.1137	2.842
23...	.7291	18.228	53...	.4776	11.944	83...	.1032	2.580
24...	.7244	18.109	54...	.4651	11.628	84...	.0927	2.318
25...	.7194	17.985	55...	.4523	11.307	85...	.0823	2.057
26...	.7143	17.857	56...	.4393	10.982	86...	.0720	1.799
27...	.7089	17.723	57...	.4261	10.653	87...	.0619	1.548
28...	.7034	17.585	58...	.4128	10.321	88...	.0524	1.310
29...	.6976	17.440	59...	.3994	9.985	89...	.0434	1.085
30...	.6916	17.291	60...	.3859	9.648	90...	.0347	0.867
31...	.6854	17.135	61...	.3724	9.309	91...	.0262	0.654
32...	.6789	16.973	62...	.3588	8.969	92...	.0181	0.454
33...	.6722	16.806	63...	.3452	8.630	93...	.0116	0.291
34...	.6653	16.632	64...	.3316	8.290	94...	.0055	0.137
35...	.6580	16.451	65...	.3181	7.952	95...	.....	.....
36...	.6505	16.263	66...	.3046	7.616			
37...	.6428	16.069	67...	.2913	7.282			
38...	.6347	15.868	68...	.2781	6.952			
39...	.6264	15.659	69...	.2651	6.627			

If an annuity is payable semiannually, add .250 to the annuity value in column 2.

If an annuity is payable quarterly, add .375 to the annuity value in column 2.

If an annuity is payable monthly, add .458 to the annuity value in column 2.

TABLE D.

AMERICAN EXPERIENCE TABLE.—DISCOUNTED AT 5 PER  
CENT COMPOUND INTEREST.

Age	Expectation of life in years	Present value of \$1 per annum	Age	Expectation of life in years	Present value of \$1 per annum
0	41.45	\$12.818	48	22.35	\$12.133
1	47.94	14.922	49	21.63	11.901
2	50.16	15.731	50	20.91	11.662
3	50.91	16.125	51	20.20	11.416
4	51.23	16.346	52	19.49	11.164
5	51.13	16.472	53	18.79	10.905
6	50.83	16.535	54	18.00	10.640
7	50.41	16.561	55	17.40	10.370
8	49.90	16.560	56	16.72	10.095
9	49.33	16.540	57	16.05	9.8145
10	48.72	16.505	58	15.39	9.5299
11	48.09	16.461	59	14.74	9.2413
12	47.45	16.415	60	14.10	8.9493
13	46.80	16.366	61	13.47	8.6545
14	46.16	16.316	62	12.86	8.3574
15	45.51	16.263	63	12.26	8.0588
16	44.85	16.207	64	11.67	7.7590
17	44.19	16.149	65	11.10	7.4588
18	43.53	16.088	66	10.54	7.1592
19	42.87	16.024	67	10.00	6.8607
20	42.20	15.957	68	9.47	6.5642
21	41.53	15.886	69	8.97	6.2705
22	40.85	15.813	70	8.48	5.9801
23	40.17	15.736	71	8.00	5.6942
24	39.49	15.655	72	7.55	5.4129
25	38.81	15.570	73	7.11	5.1359
26	38.12	15.482	74	6.68	4.8628
27	37.43	15.389	75	6.27	4.5926
28	36.73	15.292	76	5.88	4.3248
29	36.03	15.191	77	5.49	4.0586
30	35.33	15.084	78	5.11	3.7939
31	34.63	14.973	79	4.75	3.5311
32	33.92	14.857	80	4.39	3.2702
33	33.21	14.735	81	4.05	3.0135
34	32.50	14.608	82	3.71	2.7606
35	31.78	14.475	83	3.39	2.5105
36	31.07	14.336	84	3.08	2.2607
37	30.35	14.191	85	2.77	2.0098
38	29.63	14.039	86	2.47	1.7606
39	28.90	13.881	87	2.18	1.5175
40	28.18	13.716	88	1.91	1.2861
41	27.45	13.544	89	1.66	1.0670
42	26.72	13.365	90	1.42	0.85453
43	25.99	13.179	91	1.19	0.64497
44	25.27	12.985	92	.98	0.44851
45	24.54	12.783	93	.80	0.28761
46	23.81	12.574	94	.64	0.13605
47	23.08	12.357	95	.50	

TABLE E.

CARLISLE TABLE OF MORTALITY, WITH INTEREST AT 5 PER  
CENT PER ANNUM.

AGE	\$1 annuity value	Present worth of remainder	AGE	\$1 annuity value	Present worth of remainder
0	12.083	.37700	52	11.154	.42124
1	13.995	.28595	53	10.892	.43371
2	14.983	.23891	54	10.624	.44648
3	15.824	.19886	55	10.347	.45967
4	16.271	.17757	56	10.063	.47319
5	16.590	.16238	57	9.771	.48710
6	16.735	.15548	58	9.478	.50105
7	16.790	.15286	59	9.199	.51433
8	16.786	.15305	60	8.940	.52667
9	16.742	.15514	61	8.712	.53752
10	16.669	.15862	62	8.487	.54824
11	16.581	.16281	63	8.258	.55914
12	16.494	.16695	64	8.016	.57067
13	16.406	.17114	65	7.765	.58262
14	16.316	.17543	66	7.503	.59510
15	16.227	.17967	67	7.227	.60824
16	16.144	.18362	68	6.941	.62186
17	16.066	.18733	69	6.643	.63605
18	15.987	.19110	70	6.336	.65067
19	15.904	.19505	71	6.015	.66595
20	15.817	.19919	72	5.711	.68043
21	15.726	.20352	73	5.435	.69357
22	15.628	.20819	74	5.190	.70524
23	15.525	.21310	75	4.989	.71481
24	15.417	.21824	76	4.792	.72419
25	15.303	.22367	77	4.609	.73291
26	15.187	.22919	78	4.422	.74181
27	15.065	.23500	79	4.210	.75191
28	14.942	.24086	80	4.015	.76119
29	14.827	.24633	81	3.799	.77148
30	14.723	.25129	82	3.606	.78067
31	14.617	.25633	83	3.406	.79019
32	14.506	.26162	84	3.211	.79948
33	14.387	.26729	85	3.009	.80910
34	14.260	.27333	86	2.830	.81762
35	14.127	.27967	87	2.685	.82452
36	13.987	.28633	88	2.597	.82870
37	13.843	.29319	89	2.495	.83357
38	13.695	.30024	90	2.339	.84103
39	13.542	.30752	91	2.321	.84186
40	13.390	.31477	92	2.412	.83752
41	13.245	.32167	93	2.518	.83248
42	13.101	.32852	94	2.569	.83005
43	12.957	.33538	95	2.596	.82876
44	12.806	.34257	96	2.555	.83071
45	12.648	.35010	97	2.428	.83676
46	12.480	.35810	98	2.278	.84391
47	12.301	.36662	99	2.045	.85500
48	12.107	.37586	100	1.624	.87505
49	11.892	.38610	101	1.192	.89562
50	11.660	.39714	102	0.753	.91653
51	11.410	.40905	103	0.317	.9328

TABLE F.

CARLISLE TABLE OF MORTALITY, WITH INTEREST AT 6 PER  
CENT PER ANNUM.

AGE	\$1 Annuity value	Present worth of remainder	AGE	\$1 Annuity value	Present worth of remainder
0	10.439	.35251	52	10.208	.36558
1	12.078	.25974	53	9.988	.37804
2	12.925	.21179	54	9.761	.39089
3	13.652	.17065	55	9.524	.40431
4	14.042	.14857	56	9.280	.41812
5	14.325	.13255	57	9.027	.43243
6	14.460	.12491	58	8.772	.44687
7	14.518	.12163	59	8.529	.46062
8	14.526	.12117	60	8.304	.47336
9	14.500	.12264	61	8.108	.48445
10	14.448	.12558	62	7.913	.49549
11	14.384	.12921	63	7.714	.50676
12	14.321	.13227	64	7.502	.51875
13	14.257	.13640	65	7.281	.53126
14	14.191	.14013	66	7.049	.54440
15	14.126	.14381	67	6.803	.55832
16	14.067	.14715	68	6.546	.57287
17	14.012	.15026	69	6.277	.58809
18	13.956	.15343	70	5.998	.60389
19	13.897	.15677	71	5.704	.62053
20	13.835	.16028	72	5.424	.63638
21	13.769	.16402	73	5.170	.65075
22	13.697	.16809	74	4.944	.66355
23	13.621	.17240	75	4.760	.67396
24	13.541	.17692	76	4.579	.68421
25	13.456	.18174	77	4.410	.69377
26	13.368	.18672	78	4.238	.70351
27	13.275	.19198	79	4.040	.71472
28	13.182	.19725	80	3.858	.72502
29	13.096	.20211	81	3.656	.73645
30	13.020	.20642	82	3.474	.74675
31	12.942	.21083	83	3.285	.75740
32	12.860	.21547	84	3.102	.76781
33	12.771	.22051	85	2.909	.77874
34	12.675	.22594	86	2.739	.78836
35	12.573	.23172	87	2.599	.79628
36	12.465	.23783	88	2.515	.80101
37	12.354	.24411	89	2.417	.80658
38	12.239	.25062	90	2.266	.81513
39	12.120	.25736	91	2.248	.81615
40	12.002	.26404	92	2.337	.81111
41	11.890	.27038	93	2.440	.80528
42	11.779	.27666	94	2.492	.80234
43	11.668	.28294	95	2.522	.80054
44	11.551	.28957	96	2.486	.80268
45	11.428	.29653	97	2.368	.80936
46	11.296	.30400	98	2.227	.81734
47	11.154	.31204	99	2.004	.82996
48	10.998	.32087	100	1.596	.85306
49	10.823	.33077	101	1.175	.87689
50	10.631	.34164	102	0.744	.90128
51	10.422	.35347	103	0.314	.92562



TABLE G.

## AMERICAN EXPERIENCE TABLE OF MORTALITY.

AGE	Number living	Number dying during year	Expectation	AGE	Number living	Number dying during year	Expectation
10.....	100,000	749	48.72	53.....	66,797	1,091	18.79
11.....	99,251	746	48.09	54.....	65,706	1,143	18.09
12.....	98,505	743	47.45	55.....	64,563	1,199	17.40
13.....	97,762	740	46.80	56.....	63,364	1,260	16.72
14.....	97,022	737	46.16	57.....	62,104	1,325	16.05
15.....	96,285	735	45.51	58.....	60,779	1,394	15.39
16.....	95,550	732	44.85	59.....	59,385	1,468	14.74
17.....	94,818	729	44.19	60.....	57,917	1,546	14.10
18.....	94,089	727	43.53	61.....	56,371	1,628	13.47
19.....	93,362	725	42.87	62.....	54,743	1,713	12.86
20.....	92,637	723	42.20	63.....	53,030	1,800	12.26
21.....	91,914	722	41.53	64.....	51,230	1,889	11.67
22.....	91,192	721	40.85	65.....	49,341	1,980	11.10
23.....	90,471	720	40.17	66.....	47,361	2,070	10.54
24.....	89,751	719	39.49	67.....	45,291	2,158	10.00
25.....	89,032	718	38.81	68.....	43,133	2,243	9.47
26.....	88,314	718	38.12	69.....	40,890	2,321	8.97
27.....	87,596	718	37.43	70.....	38,569	2,391	8.48
28.....	86,878	718	36.73	71.....	36,178	2,448	8.00
29.....	86,160	719	36.03	72.....	33,730	2,487	7.55
30.....	85,441	720	35.33	73.....	31,243	2,505	7.11
31.....	84,721	721	34.63	74.....	28,738	2,501	6.68
32.....	84,000	723	33.92	75.....	26,237	2,476	6.27
33.....	83,277	726	33.21	76.....	23,761	2,431	5.88
34.....	82,551	729	32.50	77.....	21,330	2,369	5.49
35.....	81,822	732	31.78	78.....	18,961	2,291	5.11
36.....	81,090	737	31.07	79.....	16,670	2,196	4.75
37.....	80,353	742	30.35	80.....	14,474	2,091	4.39
38.....	79,611	749	29.63	81.....	12,383	1,964	4.05
39.....	78,862	756	28.90	82.....	10,419	1,816	3.71
40.....	78,106	765	28.18	83.....	8,603	1,648	3.39
41.....	77,341	774	27.45	84.....	6,955	1,470	3.08
42.....	76,567	785	26.72	85.....	5,485	1,292	2.77
43.....	75,782	797	25.99	86.....	4,193	1,114	2.47
44.....	74,985	812	25.27	87.....	3,079	933	2.18
45.....	74,173	828	24.54	88.....	2,146	744	1.91
46.....	73,345	848	23.81	89.....	1,402	555	1.66
47.....	72,497	870	23.08	90.....	847	385	1.42
48.....	71,627	895	22.35	91.....	462	246	1.19
49.....	70,731	927	21.63	92.....	216	137	.98
50.....	69,804	962	20.91	93.....	79	58	.80
51.....	68,842	1,001	20.20	94.....	21	18	.64
52.....	67,841	1,044	19.49	95.....	3	3	.50

### 3. How to Use the Tables.

#### a. THE NECESSARY FACTORS.

First ascertain the rate of interest to be employed and the mortality table to be used.

The tables give the present value of an income of \$1.00 per annum at the various ages, based on their expectation of life *from year to year*.

To find the present value of the annual income from a specified principal sum during the lifetime of a person, find the annual income on the basis of the given rate of interest and then multiply this annual income by the value of one dollar at the given age as shown in the table.

To find the value of dower make the same calculation and divide it by three.

To find the remainder deduct the life estate value from the principal sum.

#### b. ASCERTAINING THE VALUE.

A New York testator dying in January, 1917, leaves a net estate of \$300,000 to his widow, aged 30, for life; on her death remainder to their only child, then a minor.

By reference to the table of States we find that New York uses the American experience table on the basis of 5%, and by reference to that table — Table D — we find that the present worth of an annuity of \$1.00 at 5% to a life tenant 30 years of age is \$15.08425.

The annual income of \$300,000 at 5% is \$15,000, which, multiplied by the present worth of the annuity of \$1.00, gives \$226,263.75 as the value of the life estate and subtracting from the principal sum \$300,000, the value of the remainder is \$73,736.25.

### 4. Application to the Problems of Inheritance Taxation.

Taking the above example of a life estate and a remainder created by the will of a New York decedent in favor of his

widow of 30 and his minor child in \$300,000 net estate, the date of death being January, 1917:

Assume:

- a. That \$100,000 is personal property located in Arizona.
- b. That \$100,000 is personal property invested in Idaho.
- c. That \$100,000 is personal property located in Tennessee. What inheritance taxes must be paid in those States?
- d. What tax must be paid in the State of New York?
- e. What tax must be paid the United States Government and in what proportions?
- f. What is the total tax due by life tenant and remainderman less any possible discounts for prompt payment?

a. THE VALUE AND TAX IN ARIZONA.

As to the \$100,000 invested in Arizona, we find by reference to the table of States that Arizona uses the Combined Actuaries' table on the basis of 4% (Table A). The annual income on \$100,000 at 4% is \$4,000. By reference to Table A we find that the annuity value of \$1.00 at the age of 30 is \$17.03961. This multiplied by \$4,000 gives \$68,158.40 as the value of the life estate and subtraction gives the value of the remainder as \$31,841.60.

By reference to the table of rates and exemptions given in the abstract of the Arizona statute (see Appendix), we find that the life tenant pays 1% over an exemption of \$5,000, giving the tax on the life estate \$631.58. The remainder pays the same rate less the same exemption, or \$268.41.

**b. THE VALUE AND TAX IN IDAHO.**

As to the \$100,000 invested in Idaho we find that State uses the Actuaries' combined table on the basis of 5% — Table B. And by reference to that table we find the annuity value of \$1.00 at the age of 30 to be \$14.8963. The income at the rate of 5% is \$5,000, which, multiplied by the annuity value of \$1.00 at 30 years, gives \$74,481.50 as the value of the life estate and the subtraction shows \$25,518.50 as the value of the remainder.

By the reference to the table of rates and exemptions in the abstract of the statute of Idaho (see Appendix), we find that the widow and minor child each have an exemption of \$10,000. As to the life estate, the tax on the first \$25,000 of the excess is 1% or \$250, leaving \$25,000 to be taxed at 1½% or \$375, and \$14,481.50 to be taxed at 2% or \$289.63, a total tax to the life tenant of \$914.63.

As to the remainder of \$25,518.50, the exemption of \$10,000 leaves \$15,518.50 taxable at 1% or \$155.19 as the tax against the remainder.

**c. THE VALUE AND TAX IN TENNESSEE.**

As to the \$100,000 invested in Tennessee we find that this State uses the Carlisle table on the basis of 6% — Table F. Referring to Table F, we find that an annuity of \$1.00 is valued at \$13.020; at 6% the annual income is \$6,000, which, multiplied by the present worth of an annual income of \$1.00, gives \$78,120 as the value of the life estate and by subtraction the remainder value is \$21,880.

By reference to the table of rates and exemptions in the abstract of the Tennessee statute (see Appendix), we find that the exemption to each is \$5,000. The life tenant's interest less \$5,000 is \$73,120, of which \$20,000 pays a tax at 1% or \$200 and the balance \$53,120 pays a tax of 1¼% or \$664.00, a total of \$864 as against the life tenant. The

remainder, less the \$5,000 exemption, pays a tax of 1% on \$16,880 or \$168.80. This computation is on the tax as it stood prior to the recent Tennessee amendments.

#### d. THE TAX DUE THE STATE OF NEW YORK.

The value of the life estate in New York as we have seen by the first illustration is \$226,263.75 and of the remainder \$73,736.25.

As death occurred in January, 1917, the rates and exemptions prescribed by the statute of 1916 are in force.

This gives the widow and child each an exemption of \$5,000. The life estate subject to tax is valued at \$221,263.75 and it pays these rates:

On the first	\$25,000.00	1% or	\$250.00
On the next	75,000.00	2% or	1,500.00
On the next	100,000.00	3% or	3,000.00
On the balance	21,263.75	4% or	850.55
			<hr/>
			\$5,600.55

The remainder less the exemption is \$68,736.25, on which the tax is \$1,124.73.

#### e. THE FEDERAL TAX AND VALUATION.

The inheritance tax levied by the United States Government took effect September 8, 1916, and the amendment of March 3, 1917, increased the rates by 50%. The assumed testator died in January, 1917, and his estate is therefore taxable under the 1916 statute and not under the 1917 amendment.

The entire net estate is \$300,000 and an exemption of \$50,000 is allowed, making the taxable estate \$250,000. The State taxes are not deducted by the ruling of the treas-

ury department of September, 1917 — reversing its former rule. The net estate is therefore \$250,000, taxed as follows:

On the first	\$50,000	1% or	\$500
On the next	100,000	2% or	2,000
On the balance	100,000	3% or	3,000
			<hr/>
Total.....			\$5,500

The Federal Government, under the present statute, does not concern itself with the apportionment of the burden among the beneficiaries. The entire tax must be paid out of the residuary estate. In the present case it makes no difference, but if these were specific legatees in the supposed case they would escape payment of the tax altogether.

#### f. THE TOTAL TAX AND THE DISCOUNTS.

We now have the problem of the total tax and the discounts. The previous work shows the taxes as follows:

	Remainderman	Life Tenant
Arizona.....	\$268.41	\$631.58
Idaho.....	155.19	914.63
Tennessee.....	168.80	864.00
New York.....	1,124.73	5,600.55
		<hr/>
Total.....	\$1,717.13	\$8,010.76
		1,717.13
		<hr/>
Total State Taxes.....		\$9,727.89
Federal Tax.....		5,500.00
		<hr/>
Grand Total.....		\$15,227.89

This total, however, may be somewhat reduced by the discounts allowed by the several statutes for the prompt payment of the tax.

By referring to the table of interest and discount of taxes or to the statutes in the Appendix, it will appear that Tennessee allows 5% discount if paid within three months; the other three States 5% discount if paid within six months, and the United States 5% per annum for the time payment anticipates one year. If these taxes are all paid immediately there will be a discount of 5% on all and a total saving of \$761.39. The U. S. Statute of 1919 changes the matter of discount.

The total tax due the four States and the Federal Government, less the possible discount for prompt payment, is therefore \$14,466.50.

These figures will be slightly reduced by a further consideration. The Federal statute allows amounts paid for State taxes as a deduction. New York does not allow the Federal tax as a deduction; but in many other States where the question has arisen the deduction of the Federal tax is permitted. But the Federal tax is calculated upon the net estate, which assumes the deduction of the State taxes, and no account has been taken of this feature in the illustrative case supposed.

It should also be noted that under the new Federal act, as to persons dying after February 24, 1919, no discount is allowed.\*

The foregoing examples should enable the average attorney to work out the more simple problems involved in the taxation of life estates and remainders.

As to successive life estates and estates for joint lives the calculations require the use of other tables and higher mathematics, and should be referred to an actuary or expert mathematician.

---

\* NOTE.—For computations under Federal act of 1919, see Treasury Department regulations, p. 598.

## PART IV — THE PROPERTY

---

	PAGE
<b>A. As to Situs. ....</b>	307
1. Real Estate. ....	307
a. Taxable only Where Located. ....	307
b. No Equitable Conversion. ....	308
c. Land Contracts. ....	310
d. Leases. . . . .	311
2. Tangibles. ....	312
3. Mortgages, Bonds and Commercial Paper. ....	313
a. Situs at Domicile of Owner. ....	313
b. Where the Land Lies. ....	314
c. Where Physically Present. ....	315
d. "Transient" or "Habitual" Presence. ....	317
4. Corporate Stock . . . . .	318
a. Of Domestic Corporations. ....	318
b. Foreign Corporations Owning Property Within the State. .	320
c. Foreign Corporations Not Owning Property Within the State. . . . .	322
d. Apportionment of Corporate Property. ....	323
e. Pledged Securities. ....	324
5. Other Choses in Action. ....	328
a. Bank Deposits. ....	328
b. Debts. . . . .	330
c. Life Insurance. ....	331
d. Seat in the Stock Exchange. ....	331
e. Interest of Non-Resident in Estate of Deceased Non- Resident. . . . .	332
f. Partnership Interest. ....	332
<b>B. As to Value. ....</b>	334
1. Where the Value at Death Cannot be Ascertained. ....	334
2. Real Estate. ....	337
3. Tangibles. . . . .	340
a. Pictures. . . . .	340
b. Furniture. . . . .	340
c. Jewelry. . . . .	341
4. Notes and other Obligations. ....	343
5. Stocks. . . . .	343
a. Active Securities. ....	343
b. Inactive Securities. . . . .	345
c. Closely Held Stocks. ....	346
6. Bonds. . . . .	352



## B. As to Value — Continued.

7. Pledged Securities. ....	352
a. As to the Non-Resident Pledgor. ....	352
b. As to the Pledgee. ....	353
8. Partnerships. ....	354
9. Good Will. ....	358
a. A Taxable Asset. ....	358
b. Rules for Computation. ....	359
c. Number of Years' Purchase. ....	360
d. When the Profits are Speculative. ....	368
e. When no Profits are Shown. ....	369

C. Deductions. ....	374
1. Mortgages. ....	375
2. Debts. ....	375
a. Liability on Mortgage Bond. ....	376
b. Repairs to Real Estate. ....	376
c. Debts Paid by Will. ....	377
d. Doubtful Claims. ....	379
3. Funeral and Burial Expenses. ....	379
4. Administration Expenses and Counsel Fees. ....	380
5. Discount on Legacy. ....	381
6. Expenses of Litigation. ....	382
a. Where to Conserve the Estate. ....	382
b. Disputes Among the Beneficiaries. ....	382
7. Taxes. ....	383
a. Other Inheritance Taxes. ....	383
b. General Taxes and Assessments. ....	385
8. Commissions. ....	386
a. To Executors. ....	386
b. To Trustees. ....	388
c. On Sale of Real Estate. ....	390
9. Family Allowance. ....	390
10. Pro Rating Debts. ....	392
a. When the Local Debts Exceed the Local Assets. ....	392
b. When there are Local Assets and no Legal Debts. ....	393
c. When Local Debts are Paid with Foreign Assets. ....	394
d. When there are both Local and Foreign Debts and Assets. ....	395
e. As to Partnerships. ....	396
11. Marshaling Assets to Reduce Tax. ....	398
a. When the Executor can do so. ....	398
b. When he cannot. ....	399

## PART IV—THE PROPERTY

---

This is not limited to such property as is defined as taxable under the general tax laws of the State, but extends to all the assets of the decedent of whatsoever name or nature.

*Matter of Knoedler*, 140 N. Y. 377; 35 N. E. 601.

*Hinds v. Wilcox*, 22 Mont. 4; 55 Pac. 355.

The court said in the *Knoedler* case: "The argument is made that it is only property which is liable to taxation under the General Tax Law of the State which can be taxed under the act relating to taxable transfers. \* \* \* The Taxable Transfer Law has no reference or relation to the general law. The two acts are not *in pari materia*. While the object of both is to raise revenue for the support of the government, they have nothing else in common. Nearly sixty years intervened between the passage of the earlier and the later statute, and the latter was enacted under different conditions from the former. It taxes the right of succession to property, and measures the tax in the method specifically prescribed. *All property* having an appraisable value must be considered, whether it is such as might be taxed under the general law or not. Many kinds of property might be enumerated which are not assessable under the general law, but which are appraisable under the Collateral Inheritance Act."

"The word 'property' is broad enough to include everything which one person can own and transfer to *another*."

*Hamilton v. Rathbone*, 175 U. S. 414.

Inheritance taxes embrace every kind of interest in the estate of a decedent.

*Attorney General v. Pierce*, 59 N. C. 240.

*Commonwealth v. Smith*, 20 Pa. St. 100.

And all property subject to the jurisdiction of the courts of the State is also subject to the transfer tax.

*Hinds v. Wilcox*, 22 Mont. 4; 55 Pac. 355.

### A.— AS TO SITUS.

As we have seen, the law of Inheritance Taxation has been complicated by the conflicting theories as to the situs of personal property, the same State persisting in taxing the intangibles of resident decedents wherever located and, at the same time, the intangible property of nonresidents when physically present within the State. Of course, the very fact that it is “physically present” anywhere conflicts with the notion that any property is “intangible.”

At all events, the actual and theoretical situs of property subject to inheritance taxation presents some of the most perplexing questions in the entire scope of the subject. It is further complicated by the frequent amendment of the statutes so that one decision which apparently conflicts with another in fact construes a statute that has since been amended by the Legislature.

The New York and Massachusetts decisions are of high authority in other States though those jurisdictions no longer tax the intangibles of nonresidents — a fact that should constantly be borne in mind.

## 1. Real Estate.

### a. TAXABLE ONLY WHERE LOCATED.

The authorities are all agreed that the real estate of a resident decedent located in a foreign jurisdiction is **not** taxable and *a fortiori* as to a nonresident.

*Matter of Swift*, 137 N. Y. 77; 32 N. E. 1096.

*Marr's Estate*, 240 Pa. St. 38; 87 A. 621.

*Succession of Westfeld*, 122 La. 836; 48 So. 281.

*People v. Kellogg*, 268 Ill. 489; 109 N. E. 304.

*Gallup's Appeal*, 76 Conn. 617; 57 A. 699.

*Lorillard v. People*, 6 Dem. 268.

**b. No EQUITABLE CONVERSION.**

The cases are also substantially unanimous in holding that even though the testator directs the sale of foreign real estate and the payment of money legacies out of the proceeds the doctrine of equitable conversion is not applicable in the law of inheritance taxation.

*Connell v. Crosby*, 210 Ill. 380; 71 N. E. 350.

*McCurdy v. McCurdy*, 197 Mass. 248; 83 N. E. 881.

*Matter of Swift*, 137 N. Y. 77; 32 N. E. 1096.

*Matter of Offerman*, 25 App. Div. 94; 48 Supp. 993.

*Matter of Hallock*, 42 Misc. 473; 87 Supp. 255.

*Matter of Sutton*, 3 App. Div. 208; 38 Supp. 277; aff. 149 N. Y. 618; 44 N. E. 1128.

In the *Swift* case, *supra*, the court said:

“Nor is the argument available that, by the power of sale conferred upon the executors, there was an equitable conversion worked of the lands in New Jersey, as of the time of the testator’s death, and, hence, that the property sought to be reached by the tax, in the eye of the law, existed as cash in this State in the executor’s hands, at the moment of the testator’s death.”

The courts of Pennsylvania alone take a contrary view. In that State, where there is a direction to sell in the will, it is held that there is a conversion and therefore foreign real estate is subject to the tax.

*Handley’s Estate*, 181 Pa. St. 339; 37 A. 587.

*In re Dalrymple*, 215 Pa. St. 367; 64 A. 554.

*In re Williamson*, 153 Pa. St. 508; 26 A. 246.

*Miller v. Commonwealth*, 111 Pa. St. 321; 2 A. 492.

*In re Vanuxem*, 212 Pa. St. 315; 6 A. 876.

But where the will of a nonresident testator merely gave a discretionary power of sale to the executor and there was no proof that the situation of the estate called upon him to exercise that power, it was held in a recent case that this did not create an equitable conversion of real estate in

Pennsylvania which was therefore held liable to the transfer tax of that State.

*Re Chamberlain*, 257 Pa. St. 113; 101 A. 314.

In *McCurdy v. McCurdy*, 197 Mass. 248; 83 N. E. 881, the court stated the doctrine thus:

“The Attorney-General, in behalf of the Treasurer and Receiver-General of the Commonwealth, contends that the doctrine of equitable conversion and exoneration should be applied to relieve the land from the encumbrance of the mortgage, and that the executors should bring the proceeds of personal estate from the place of domiciliary administration in New Jersey and apply it to the payment of the debt here, so as to leave the land free from the encumbrance within the jurisdiction of the Commonwealth. The answer to this contention is, first, that the rights and obligations of all parties in regard to the payment of a tax of this kind are to be determined as of the time of the death of the decedent. This has been settled by our decisions (*Hooper v. Bradford*, 178 Mass. 95; 59 N. E. 678; *Howe v. Howe*, 179 Mass. 546; 61 N. E. 225; *Kingsbury v. Chapin*, 196 Mass. 533; 82 N. E. 700.) Secondly, the law of equitable conversion ought not to be invoked merely to subject property to taxation, especially when the question is one of jurisdiction between different States. In *Custance v. Bradshaw*, 4 Hare, 315, 325, it was said that ‘equity would not alter the nature of the property for the purpose only of subjecting it to fiscal claims to which at law it was not liable in its existing State.’ In *Matter of Offerman*, 25 App. Div. (N. Y.) 94; 48 Supp. 993, the court says that equitable conversion should not be invoked merely for the purpose of subjecting the property to taxation. To the same effect is *Matter of Sutton*, 3 App. Div. (N. Y.) 208; 38 Supp. 277; affirmed in 149 N. Y. 618. In Pennsylvania a different rule

is established. (*Handley's Estate*, 181 Penn. St. 339; 37 A. 587.)''

### c. LAND CONTRACTS.

Money due on land contracts to pay a resident decedent's estate the purchase price of land in a foreign jurisdiction is not taxable.

*Matter of Wolcott*, 94 Misc. 73; 157 Supp. 268.

And, conversely, land contracts to sell lands in Michigan owned by a nonresident decedent are taxable in Michigan.

*Re Stanton's Estate*, 142 Mich. 491; 105 N. W. 1122.

So, where there was a contract to sell real estate and the deed was executed by the decedent, but not delivered until the day after death, and the property was located out of the State, it was held that there was no conversion and the proceeds of the sale were not taxable at domicile.

*Matter of Baker*, 67 Misc. 630; 124 Supp. 827.

On the other hand, it has been held in Nebraska that money due on a land contract is a debt with its *situs* at the domicile of the owner.

*Dodge County v. Burns*, 131 N. W. 922.

Of a nature similar to land contracts are shares in an unincorporated real estate trust where real estate is in Massachusetts; held, taxable against a nonresident holder as property within the State.

The court said: "It is not necessary to analyze with greater nicety the precise character of the property interest of a shareholder under each of the trusts. It is true of all of them that their rights are equitable interests in tangible property within this Commonwealth. While the legal title is in the trustees, their ownership is fiduciary, and the certificate holders are the ultimate proprietors of the prop-

erty, which is held and managed for their benefit, and which must be divided among them at the termination of the trust. Their rights constitute not choses in action, but a substantial property right. In this respect the case is indistinguishable in principle from shareholders in a domestic corporation. (*Greves v. Shaw*, 173 Mass. 205; 53 N. E. 372.) The fact that the certificates themselves were not within the Commonwealth is an immaterial circumstance.”

*Peabody v. Treasurer*, 215 Mass. 129; 102 N. E. 435.

#### d. LEASES.

Obviously a lease may be an asset or a liability, a debt or property. If it is a perpetual lease, reserving rent, it is held to be real property.

*Matter of Vivanti*, 138 App. Div. 281; 122 Supp. 954; 146 App. Div. 942; 131 Supp. 1148; aff. 206 N. Y. 656.

The leasehold interest was in Japan, and the court said, in holding it not taxable as against a resident decedent in New York:

“It would seem clear, upon all the testimony, that the premises in question were held by decedent under a perpetual lease, reserving rent, and that under the law of Japan, as well as under our own, the interest of the decedent therein was real property and not personal,” and the transfer thereof not taxable.

A lease for twenty-one years from Columbia College of property in New York was held personal property.

*Matter of Althause*, 63 App. Div. 252; 71 Supp. 445; aff. 168 N. Y. 670; 61 N. E. 1127.

The fact that the lease is physically out of the State does not change its situs.

“The fact that the instrument of lease was located in New Jersey is immaterial, as it was merely evidence of the decedent’s interest in the premises situate in this county. A lease is not an indebtedness existing in favor of either

of the parties thereto, but evidence of a contract or agreement by which each of the parties became entitled to certain rights. Like a certificate of stock in a corporation, it has no legal situs apart from the property to which it refers. The decedent's interest in the leasehold premises therefore constituted property in this State. (*Matter of Whiting*, 150 N. Y. 27; 44 N. E. 715; *Matter of Clinch*, 180 N. Y. 300; 73 N. E. 35.)''

*Matter of Rosenbaum*, N. Y. L. J., August 7, 1913.

## 2. Tangibles.

Cattle in another State are held not taxable as against a resident decedent in Iowa since they do not follow the domicile of the owner, even though they have been sold and the proceeds brought into the State for distribution. This is not the general doctrine.

*Weaver v. State*, 110 Ia. 328; 81 N. W. 603.

The home port of a vessel engaged in interstate commerce is its situs for purposes of taxation.

*Ayer & Lord Co. v. Kentucky*, 202 U. S. 409; 26 S. Ct. Rep. 679.

And a vessel so located is "tangible."

*People v. State Tax Commission*, 174 App. Div. 320; 160 Supp. 854.

So, a yacht of a nonresident, if its home port is within the State, is tangible.

*Matter of Curry*, N. Y. L. J., May 27, 1914.

Jewelry and bullion of a nonresident are held taxable in Pennsylvania under act of 1887, in *Grafflin's Estate* (not yet reported).

Antique furniture of a nonresident is taxable when in New York.

*Matter of Canfield*, 96 Misc. 119; 159 Supp. 735.

The New York statute prior to 1911 and after May 26, 1919, taxes the tangible property of residents in a foreign jurisdiction, so when machinery in a factory in New Jersey



was not so attached to the building that it could not be removed without injury to the property, it was held personal property and taxable as part of the estate of a New York decedent.

*Matter of Gumbinner*, 92 Misc. 104; 155 Supp. 188.

### 3. Mortgages, Bonds and Commercial Paper.

As to the situs of mortgages for purposes of inheritance taxation there are three different theories. The mortgage may be held to have its situs at the domicile of the owner, or where the land is situated, or where the bond and mortgage documents happen to be found. It is possible, under these conditions, that a mortgage held by a decedent's estate might pay taxes in three States.

#### a. SITUS AT DOMICILE OF OWNER.

The court said in *Matter of Fearing*, 200 N. Y. 340; 93 N. E. 956: "Whether the bonds are secured, as in the *Bronson* case, by mortgages of corporate property, or, as in the present case, by mortgages of the property of individuals, they represent, equally, debts of their makers, which, as choses in action, under the general rule of law, are inseparable from the personalty of the owner. Under that rule, as it was said in the *Foreign Held Bonds* case, 15 Wall. 300-320, of the bonds there, they 'can have no locality separate from the parties to whom they are due,' and the legal situs of the indebtedness, which they represent, is fixed by the domicile of the creditor. The legal title of these bonds in question was transferred by force of the laws of Rhode Island. As their legal and actual situs was in a foreign State, upon no theory were they within the operation of our Transfer Tax Law."

This doctrine is emphasized in several of the other earlier New York cases.

*Matter of Bronson*, 150 N. Y. 1; 44 N. E. 707.

*Matter of Gibbes*, 84 App. Div. 510; 83 Supp. 53; aff. 176 N. Y. 565; 68 N. E. 1117.

This is the rule adopted by the courts in several other States.

*Orcutt's Appeal*, 97 Pa. St. 179.

*Gilbertson v. Oliver*, 129 Ia. 568; 105 N. W. 1002.

*Estate of Fair*, 128 Cal. 607; 61 Pac. 184.

*Estate of McCahill*, 171 Cal. 482; 153 Pac. 930.

And was recently followed in Colorado, where it was held that the situs of unregistered corporate bonds issued by a corporation of the State is the domicile of a nonresident owner, unless physically present in the State of issue. Two justices dissented on the authority of *Matter of Bronson*, 150 N. Y. 1; 44 N. E. 707, and *Matter of Houdayer*, 150 N. Y. 37; 44 N. E. 718.

*Walker v. People* (Colo.), 171 Pac. 747.

But where the bonds of a nonresident owner were kept within the State they were held taxable in New York prior to 1911.

*Matter of Tiffany*, 143 App. Div. 327; 128 Supp. 106; aff. 202 N. Y. 550; sustained sub nom. *Wheeler v. Sohmer*, 233 U. S. 434.

#### b. WHERE THE LAND LIES.

In other States the situs of the mortgage debt is regarded as that of the land which secures it. The reasoning upon which this doctrine is founded is set forth by the Massachusetts court in *Kinney v. Stevens*, 207 Mass. 368; 93 N. E. 586, as follows:

“While, for general purposes, the interest of the mortgagee is treated as personal property, it has a local situs, and carries with it an ownership of the land until it is redeemed by the payment of the debt in performance of the condition. The debt, which is the obligation of the debtor to pay, and the land, which is the security for the payment of the debt, are individual parts of a single valuable property in the mortgagee, which may be made available in different ways. The debt belongs with the

mortgage, and it must coexist to give the mortgage validity. For that purpose it has a situs within the jurisdiction of the State where the land lies. It was held in *McCurdy v. McCurdy*, 197 Mass. 248; 83 N. E. 881, that the tax upon the succession to real estate in this Commonwealth, which belonged to a decedent in another State and was subject to a mortgage, was to be assessed only upon the value of the property above the mortgage. This was upon the ground that what passed upon the death of the mortgagor was only the value of his interest, which was the value of the real estate less the amount of the debt that was a charge upon it. This was equivalent to holding that, upon the death of the mortgagee, his interest in the real estate, to the amount of his debt, would pass in succession to his representatives.”

This rule has been adopted by the courts of Michigan and Maryland.

*Re Rogers' Estate*, 149 Mich. 305; 112 N. W. 931.

*Re Merriam's Estate*, 147 Mich. 630; 111 N. W. 196.

*Helser v. State*, 128 Md. 228; 97 A. 539.

On a similar theory bonds of the State of Massachusetts kept by a nonresident at his domicile are held taxable.

*Bliss v. Bliss*, 221 Mass. 201; 109 N. E. 148.

### c. WHERE PHYSICALLY PRESENT.

“Bonds and commercial paper are something more than mere evidences of indebtedness and may be taxed when they are physically present as well as at the domicile of the owner.”

*State ex rel. Graff v. Probate Court*, 128 Minn. 371; 150 N. W. 1004.

And so in New York, under the former statute, when the bonds themselves were physically present within the State it was held that they were taxable against a nonresident.

*Matter of Morgan*, 150 N. Y. 35; 44 N. E. 1126.

The distinction is pointed out in *Matter of Bronson*, 150 N. Y. 1; 44 N. E. 707, as follows:

“Whatever may be argued in support of the right to subject the bonds of domestic corporations to appraisement for taxation purposes under this act, when physically within the State, upon some theory that they are something more than the evidences of a debt and constitute a peculiar and appreciable species of property, within the recognition of the law as well as of the business community, such argument is certainly unavailing in this case, where the bonds themselves were at their owner’s foreign domicile.”

See also

*Matter of Houdayer*, 150 N. Y. 37; 44 N. E. 718.

In *Matter of Tiffany*, 143 App. Div. 327; 128 Supp. 106; aff. 202 N. Y. 550; sustained sub nom. *Wheeler v. Sohmer*, 233 U. S. 434, where notes of a nonresident decedent were secured by mortgages on nonresident’s land, and were in the safe deposit box of decedent in New York, they were held taxable.

In the course of its discussion the United States Supreme Court says:

“For the purposes of argument we may assume that there are limits to this kind of power; that the presence of a deed would not warrant a tax measured by the value of the real estate it conveyed, or even that a memorandum of a contract required by the statute of frauds would not support a tax on the value of the contract because it happened to be found in the testator’s New York strong box. But it is plain that bills and notes, whatever they may be called, come very near to identification with the contract that they embody. An endorsement of the paper carries the contract to the endorsee. An endorsement in blank passes the debt from hand to hand, so that whoever has the paper has the debt.”

To the same effect :

*Matter of Wall*, 105 App. Div. 643; 94 Supp. 1166.

So, mortgage bonds kept by a nonresident at her home in New Jersey were held not taxable although secured by New York real estate.

*Matter of Preston*, 75 App. Div. 250; 78 Supp. 31.

A mortgage owned by a resident secured by foreign real estate was held taxable although in the hands of a non-resident agent of the deceased.

*Matter of Corning*, 3 Misc. 160; 23 Supp. 285.

Where bonds of a foreign corporation were to be issued in New York and the testator died before they were issued, held, that the title was in the foreign corporation, and that they were not within the State for taxation purposes.

*Matter of Hillman*, 116 App. Div. 186.

d. "TRANSIENT" AND "HABITUAL" PRESENCE.

The courts have drawn a distinction between the "transient" presence of securities within the State and their "habitual" deposit there.

*Matter of Leopold*, 35 Misc. 369; 71 Supp. 1032.

The distinction is well stated in *Matter of Romaine*, 127 N. Y. 80, where the court says:

"We should hesitate before applying the statute to any property casually brought into the State for a temporary purpose, or by a visitor or traveler, but the record before us does not present such a case. It might well be held that such property, although literally 'within the State,' was not here in the sense meant by the statute on account of the transitory and accidental character of its presence and the immediate custody of the owner."

When paper evidences of debt are in the possession and control of an agent of the owner in some State other than

that of his domicile, and are held there by such agent for management in connection with business there carried on, they are regarded as property within the State for inheritance tax purposes.

*Estate of Fair*, 128 Cal. 607; 61 Pac. 184.

*Matter of Morgan*, 150 N. Y. 35; 44 N. E. 1126.

When a resident of Minnesota came to California for his health and brought with him for safekeeping Minnesota securities, they were held "transiently" within the State and not taxable in California.

*Estate of McCahill*, 171 Cal. 482; 153 Pac. 930.

In discussing this distinction the Illinois court says in *People v. Griffith*, 245 Ill. 532; 92 N. E. 313 (*supra*):

"There was no evidence in the record showing that the money that was used in purchasing the stocks and bonds found in the safety deposit box of decedent was kept here for investment, but only for safekeeping. Under the New York decisions construing the statute previous to the adoption here, as well as from the wording of the statute, there is a basis for contending that the bonds of foreign corporations habitually in this State, even though here only for safekeeping, should be taxed. In reaching a conclusion on this question, however, it is necessary to keep in mind the familiar rule applicable to all forms of taxation, and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language. If there be doubt whether under the language it was intended to tax certain property, the language should not be extended beyond the clear import of the words used."

#### **4. Corporate Stock.**

##### **a. OF DOMESTIC CORPORATIONS.**

The authorities agree that a State may tax the transfer of stock owned by nonresidents in domestic corporations,

even though the certificates are physically kept without the State.

*Hawley v. Malden*, 232 U. S. 1; 34 S. Ct. Rep. 201.

*Ewald's Exr. v. City of Louisville* (Ky.), 189 S. W. 438.

*Matter of Clarkson* (Ark.), 188 S. W. 834.

*Dixon v. Russell*, 78 N. J. L. 296; 73 A. 51.

This was the rule in New York prior to the repeal of the tax on intangibles of nonresidents in 1911.

“The attitude of a holder of shares of capital stock is quite other than that of a holder of bonds towards the corporation which issued them. While the bondholders are simply creditors, whose concern with the corporation is limited to the fulfillment of its particular obligation, the shareholders are persons who are interested in the operation of the corporate property and franchises, and their shares actually represent undivided interests in the corporate enterprise.”

*Matter of Bronson*, 150 N. Y. 1; 44 N. E. 707.

To the same effect is:

*Matter of Whiting*, 150 N. Y. 27; 44 N. E. 715.

“The situs of stock in a corporation is the State of incorporation, for the purposes at least of the inheritance tax law.”

*McDougald v. Low*, 164 Cal. 107; 127 Pac. 1027.

So it was held in Nebraska that stock in a Nebraska corporation, held in a foreign State by a foreign trustee under the deed of a resident decedent, was taxable.

*Douglas County v. Kountze*, 84 Neb. 506; 121 N. W. 593.

When stock of domestic corporations is found in the safe deposit box of a nonresident decedent in Illinois, held taxable.

*People v. Griffith*, 245 Ill. 532; 92 N. E. 313.

It is taxable even though the certificates are without the State.

*Greves v. Shaw*, 173 Mass. 205; 53 N. E. 372.

And though the stock is held in another's name.

*Matter of Newcomb*, 71 App. Div. 606; 76 Supp. 222; aff. 172 N. Y. 608; 64 N. E. 1123.

The tax is imposed though the certificates are given for life to mother of the donor with remainder to a niece.

*Matter of Bushnell*, 73 App. Div. 325; 77 Supp. 4; aff. 172 N. Y. 649; 65 N. E. 1115.

When the remainderman dies before the life tenant they are still taxable when passing under the former's will.

*Matter of Wright*, 214 N. Y. 714; 108 N. E. 1112.

For the purposes of inheritance taxation a national bank located within the State is a domestic corporation.

*Matter of Cushing*, 40 Misc. 505; 82 Supp. 795.

“A share of stock in a corporation may be defined as a right which its owner has in the management, profits and ultimate assets of the corporation. The shares of stock represent interests in the earnings or the property of the corporation and a certificate is not stock itself, but only a convenient representation of it, though one may be a stockholder without having a certificate issued to him.” The Iowa court finds that the decedent owned an “interest” in the property of the bank within the meaning of the inheritance statute and that such interest is property within the jurisdiction of the State.

*In re Culver*, 145 Ia. 1; 123 N. W. 743.

#### b. FOREIGN CORPORATIONS OWNING PROPERTY WITHIN THE STATE.

On the theory that a certificate of stock is a mere muniment of title, like a title deed, not the stock itself, but mere



evidence of its ownership (*Cook on Corporations*, Sec. 13), many states tax transfers of stock in foreign corporations when such corporations own property within the State to the proportion that such value bears to the entire assets of the company.

These statutes are in practice very difficult of enforcement. Where the testator and the beneficiaries are both nonresidents the courts of Illinois hold that no tax can be imposed upon the transfer of stock in a foreign corporation merely because that corporation owns tangible assets in Illinois.

*Oakman v. Small*, 282 Ill. 360; 118 N. E. 775.

Other recent cases in that State have followed this doctrine.

*People v. Cuyler*, 276 Ill. 72; 114 N. E. 494.

*People v. Dennett*, 276 Ill. 43; 114 N. E. 493.

*People v. Blair*, 115 N. E. 218.

Another difficulty in the practical application of the tax under such circumstances arose in Idaho.

The decedent, E. H. Harriman, a resident of New York, owned shares of stock in the Union Pacific, which corporation owned all the stock of the Oregon Short Line Railroad Company, which later corporation owned large and valuable property in Idaho. Held, that as the shares of stock of the Union Pacific owned by the deceased were not physically within Idaho at the time of his death and the deceased owned no stock in the Oregon Short Line, his interest therein because of his ownership of Union Pacific stock was not subject to tax under the Idaho statute.

*State v. Dunlap*, 28 Ida. 784; 156 Pac. 1141.

C. FOREIGN CORPORATIONS NOT OWNING PROPERTY WITHIN THE STATE.

As a general rule the transfer of stock in such corporations is not taxed as against a nonresident decedent merely because the certificates are physically within the State.

*Matter of James*, 144 N. Y. 6; 38 N. E. 961.

*Matter of Bishop*, 82 App. Div. 112; 81 Supp. 474.

*People v. Griffith*, 245 Ill. 532; 92 N. E. 313; followed (1917) 276 Ill. 44 and 73.

But the reasoning of modern authorities would support such a tax when the certificate is within the jurisdiction of the taxing power. For example, in New York, though the inheritance tax was held not to cover the certificates of foreign corporations kept in New York by nonresident decedents, it was held that such certificates are taxable property.

In *People ex rel. Hatch v. Reardon*, 185<sup>4</sup> N. Y. 531, 450, the court said: "But even assuming that a tax on the sale of property is, in effect, a tax upon the property itself, what are certificates of stock and how may they be treated by the State for purposes of taxation? They may be treated as property from the function they perform and the use that is made of them. They may well be regarded as a distinct species of property, for they now represent the bulk of the property in the State and are the universal medium of transfer. As we said in a recent case: 'The main use of certificates is for convenience of transfer, and they are treated by business men as property for all practical purposes. They are sold in the market, transferred as collateral security to loans and are used in various ways as property. They pass by delivery from hand to hand, are the subject of larceny, and are taxable generally in this State.' "

In *Simpson v. Jersey City Contracting Company*, 165

N. Y. 193, the plaintiffs were suing a foreign corporation and procured a warrant of attachment and a levy was made on certain certificates of stock in another foreign corporation, which certificates were physically in the possession of the Produce Exchange of the city of New York, and the question was, whether an attachment could be had of the physical pieces of paper. The court said, at page 197: "Jurisdiction is founded on the presence of the thing in respect to which it is exercised. The action is *in rem* and seeks the place *rei sitæ*. Did it not therefore clearly have rights or interests within this State which could be impounded by our courts to abide the result of the litigation over the plaintiff's claim? I think so."

#### 4. APPORTIONMENT OF CORPORATE PROPERTY.

When a corporation is incorporated in several States and the tax is against the estate of a nonresident stockholder, it is based not on the market value of the stock but upon the proportionate value of the property of the corporation within the State.

*Matter of Cooley*, 186 N. Y. 220; 78 N. E. 939.

*Matter of Thayer*, 193 N. Y. 490; 86 N. E. 462.

*Kingsbury v. Chapin*, 196 Mass. 533; 82 N. E. 700.

*Gardiner v. Carter*, 74 N. H. 507; 69 A. 939.

The same is true as to joint stock associations organized in several States.

*Matter of Willmer*, 75 Misc. 62; 134 Supp. 686; aff. 153 App. Div. 804; 138 Supp. 649.

But when the corporation is incorporated in one State only the value of a nonresident's interest in a domestic corporation is fixed by the market price and not by the proportion of the corporate assets within the State.

*Matter of Palmer*, 183 N. Y. 238; 76 N. E. 16.

## e. PLEDGED SECURITIES.

Securities pledged by a nonresident decedent within the State to secure a debt have been held not to be his property for the purposes of taxation.

*Matter of Pullman*, 46 App. Div. 574; 62 Supp. 395.

*Matter of Ames*, 141 Supp. 793.

But this rule has not been followed in other States, and a recent case in New Jersey takes the contrary view upon the authority of other New York cases.

*Security Trust Co. v. Edwards*, 90 N. J. L. 558; 101 A. 384.

In this case stock in a New Jersey corporation was pledged by a Connecticut decedent in Connecticut, but the New Jersey Comptroller refused to allow its transfer unless the tax was paid. The court said:

“The New York courts recognize that the pledgor has a residuary interest. In *Warner v. Fourth National Bank*, 115 N. Y. 251, the interest of a nonresident pledgor of notes held in pledge by a resident, was held to be subject to attachment in New York State. Judge Gray says: ‘The title to property may remain in the pledgor, but the pledgee has a lien, or special property, in the pledge, which entitled him to its possession against the world.’ And further: ‘The pledgor’s residuary interest in the pledge constitutes a claim or demand upon the pledgee, which is property, and hence may become the subject of attachment.’ And again: ‘We think the attachment in question here operated to secure to the (attaching creditor) the lien upon the pledged property, to the extent of the interest of the (pledgor), and that interest was the right to the pledged property, or so much of it or of its proceeds from any collection as remained after the satisfaction of the pledgee’s claim for advances.’

“See also opinion of the same judge in *Simpson v. Jersey City Contracting Co.*, 165 N. Y. 193, where it is said: ‘The

pledgee obtains a special property in the thing pledged, while the pledgor remains general owner.'

"The most distinguished New York judge of all times, Chancellor Kent, expressly held in *Cortelyou v. Lansing*, 2 Caines Cases, 200; 2 N. Y. Common Law Reports, 802 (1805), that the legal property in a pledge does not pass as in the case of a mortgage with defeasance; that the general ownership remained with the pledgor and only a special property passed to the pledgee, and further that the pledgor's interest passed to his administrators.

"If the stock had a situs here, where else can be the situs of the residuum?

"If the interest of the pledgee is less than absolute and unqualified ownership, how can the residuary interest of the pledgor have a situs other than that of the subject of the pledge?"

The opinion thus supports its ruling from other authorities after an extended review of the English cases:

"In *Meisel v. Merchants National Bank*, 85 N. J. L. 253; 88 A. 1067 (Court of Errors, 1913), it was said in effect that the pledgor has the right to bring a possessory action against the pledgee to recover the stock itself, providing only he makes and keeps good a tender of the debt.

"In *McCrea v. Yule*, 68 N. J. L. 465; 53 A. 210, the Supreme Court in 1902, in a case of an assignment of a chose in action as collateral security, said (p. 467):

"A pledgee of personal property, assigned as collateral security, has the right to collect the interest, dividends and income accruing on the collateral assigned, accounting to the pledgor upon the redemption of the pledge. In making such collections the pledgee is a trustee of the pledgor to see to the proper applications of the funds collected or to refund the same to the pledgor if the debt be otherwise paid.' In *Mechanics' B. & L. v. Conover*, 14 N. J. Eq. 219 (reversed on the other grounds, *Herbert v. Mechanics' B. &*

*L. Assn.*, 17 N. J. Eq. 497), the court said that when shares of stock are pledged they 'remain the property of the shareholder for every purpose excepting that of defeating the lien' of the pledgee.

"In the United States Supreme Court, drawing the familiar distinction between a chattel mortgage and a pledge, Mr. Justice Pitney says, in *Dale v. Pattison*, 234 U. S. 399, 405; 34 Sup. Ct. Rep. 785:

" 'On the other hand, where title to the property is not presently transferred, but possession only is given, with power to sell upon default in the performance of a condition, the transaction is a pledge, and not a mortgage.' "

The law of Connecticut appears to be to the same effect. In *Robertson v. Wilcox*, 36 Conn. 426 (1870), the highest court of that State, at page 430, said:

"A pledge of property does not carry with it the title to the thing pledged. The title remains as before. All that passes to the pledgee is the right of possession, coupled with a special interest in the property, in order to protect the right."

The method of computing the tax in the above case is instructive. The court thus states the process:

"Morse left no real estate whatever, either within or without New Jersey. His gross estate amounted to \$64,523.85, and by the will went entirely to collaterals or those unrelated to the testator. The estate consisted largely of certain securities, viz., corporate stock and four bonds appraised in the aggregate at \$63,285.50. All of these securities had been pledged by Morse in his lifetime, accompanied by a power of attorney in blank, to the Phoenix National Bank of Hartford, Connecticut, to secure his promissory note of \$37,500, upon which there was due \$5.21 of interest, together with all of the principal amount, at the time of his death. It does not appear that this note

had been called prior to the death of Morse or that the pledgee had caused any of the securities to be transferred to it or that any demand had been made upon him prior to death for the payment of the note.

“Among the securities so pledged were New Jersey stocks appraised in aggregate at \$28,249.

“The Comptroller appraised the New Jersey stocks at the figures above mentioned, and the decedent’s interest in the New Jersey stocks at the sum of \$11,507. This amount was obtained by pro-rating the amount of the loan, together with such portion of the general deductions as the other assets were insufficient to meet, over all of the stocks pledged. The value of the equity in the New Jersey stocks was arrived at by applying to the equity in all of the stocks the fraction represented by the value of the New Jersey stocks over the value of all the securities pledged.

“Treating the gross estate for the purpose of taxation as the value of the equity in all of the stocks, plus the value of the other assets, the Comptroller arrived at the proportion demanded by the method of computation prescribed for nonresident estates in section 12 of the act (namely, the ratio of the New Jersey property to the total property wherever situate), which proportion was found to be 42.6%. The tax was then calculated in the manner prescribed in that section and found to be \$527.55.

“The Comptroller refused to consent to the transfer of the New Jersey stocks to executor of the decedent, unless such tax upon the decedent’s equity therein was paid, and accordingly it was paid.

“The amount of the tax, *i. e.*, the method of computation, is not challenged, and with that we are not concerned.”

It is believed that the New Jersey court states a sounder doctrine than that of the *Pullman* and *Ames* cases and that it will be sustained in New York.

But in any event, when redeemed by the executor the title relates back to the date of death.

*Matter of Hurcomb*, 36 Misc. 755; 74 Supp. 475.

Where the court said:

“While the debt secured by the pledge of collateral is unliquidated, and the extent of the equity is unascertainable, as was the case in the *Matter of Pullman*, it may well be that the taxation of any equity therein would be postponed until the transaction had been completed and the value of the decedent’s interest therein determined. But after the transaction had been closed, and the interest of the estate therein fixed by redemption of the collateral—to paraphrase the language of Justice Patterson—those securities are no longer liable to be resorted to by creditors; the title to them has reverted to the estate of the pledgor, and they are in a situation to be taxed as property of the estate. They can no longer be required to pay the debts to which they were pledged as collateral, and there is no longer a necessity for protecting the creditor’s security, his relation to the matter having terminated.”

The pledged property cannot be redeemed with the proceeds of tangible assets which are taxable within the State and thus free exempt property from the lien, but the debt must be deemed to be paid with the pledged property for purposes of taxation.

*Matter of Burden*, 47 Misc. 329; 95 Supp. 972.

And the surplus value of the pledged assets is property within the State for purposes of taxation.

*Matter of Bennett*, N. Y. L. J., October 24, 1906; aff. 120 App. Div. 904; 105 Supp. 1107.

## 5. Other Choses in Action.

### a. BANK DEPOSITS.

Money deposited in banks is taxable at the place of deposit.

*Matter of Burr* (prior to 1911), 16 Misc. 89; 30 Supp. 811.

*Re Rogers’ Estate*, 149 Mich. 305; 112 N. W. 931.

*Re Speers*, 4 Ohio N. P. 238.



And also at domicile of decedent, even though it involves double taxation.

*Mann v. Carter*, 74 N. H. 345; 68 A. 130.

So it was recently held in Iowa that a savings bank deposit owned by a nonresident decedent and represented by a passbook in her possession was subject to the inheritance tax of Iowa.

*Hoyt v. Keegan* (Ia.), 167 N. W. 521.

In discussing the theory of such taxation (prior to 1911) the New York Court of Appeals said:

“If he had deposited *in specie*, to be returned *in specie*, there can be no doubt that the money would be property in this State subject to taxation. But, instead, he did as business men generally do, deposited his money in the usual way, knowing that, not the same, but the equivalent, would be returned to him upon demand. While the relation of debtor and creditor technically existed, practically he had his money in the bank and could come and get it when he wanted it. It was an investment in this State subject to attachment by creditors. If not voluntarily repaid, he could compel payment through the courts of this State. The depositary was a resident corporation, and the receiving and retaining of the money were corporate acts in this State. Its repayment would be a corporate act in this State. Every right springing from the deposit was created by the laws of this State. Every act out of which those rights arose was done in this State. In order to enforce those rights, it was necessary for him to come into this State. Conceding that the deposit was a debt; conceding that it was intangible, still it was property in this State for all practical purposes, and in every reasonable sense within the meaning of the Transfer Tax Act.”

*Matter of Houdayer*, 150 N. Y. 37; 44 N. E. 718.

The rule is applied even though depositor holds a certificate of deposit at his nonresident domicile.

*Matter of Hewitt*, 90 Supp. 1100; aff. 181 N. Y. 547.

#### b. DEBTS.

When a debt is due from a resident to a nonresident decedent it is the property of such nonresident, and has been held property within the State for purposes of inheritance taxation.

*People ex rel. Graff v. Probate Court*, 128 Minn. 371; 150 N. W. 1094.

*Blackstone v. Miller*, 188 U. S. 189.

*Matter of Page*, N. Y. L. J., April 13, 1912.

*Matter of Daly*, 100 App. Div. 373; 91 Supp. 858; aff. 182 N. Y. 524; 74 N. E. 1116 (prior to 1911).

A contrary rule has recently been applied in Illinois.

*People v. Blair* (Ill.), 115 N. E. 218.

In the *Daly* case the court said:

“The continuous tendency of the courts of this State has been to embrace within the Transfer Tax Law, directly or indirectly, all property of every species found herein upon the death of the decedent. That policy and rule has never been departed from or infringed upon, save by the application of what the court regarded as an inexorable rule of law, which upon thorough examination turns out to be a fiction. When that fact appeared, and the statute is the subject of construction wherein it is made to appear, it becomes controlling not only as an adjudication of the highest court of the land, but also as an adjudication of the construction adopted by the courts of this State. It is not so much a difference of construction as it is of reason producing it, and when the reason for a given construction is shown to fail, and the policy of the statute is clear, the adjudication of the United States court becomes supreme and is made the law of the land with respect to the particular questions involved.

“Under these circumstances, we think its rule must obtain, and so obtaining it necessarily follows that debts due within this State from solvent debtors, which are converted into money herein, and must of necessity be enforced in this jurisdiction, or not at all, become property within the meaning of the Transfer Tax Law, and as such are taxable.”

On the other hand, it has been held that the situs of a debt is the domicile of the creditor.

*Citizens Bank v. Sharp*, 53 Md. 521.

*Kintzing v. Hutchinson*, Fed. Cas. No. 7,384.

As a matter of fact it is both for purposes of inheritance taxation.

#### c. LIFE INSURANCE.

A policy of life insurance held by a nonresident in a local company is not property within the State subject to the inheritance tax.

*Matter of Parsons*, 117 App. Div. 321; 102 Supp. 168.

*Matter of Elting*, 78 Misc. 692; 140 Supp. 238.

#### d. SEAT IN THE STOCK EXCHANGE.

This is universally held to be property.

*Nashua Bank v. Abbott*, 181 Mass. 531; 63 N. E. 1085.

*Powell v. Waldron*, 89 N. Y. 328.

*People v. Feitner*, 167 N. Y. 1; 60 N. E. 265.

*Page v. Edmunds*, 187 U. S. 596; 23 S. Ct. Rep. 200.

It is taxable as such in New York against a resident.

*Matter of Glendinning*, 68 App. Div. 125; 74 Supp. 190; aff. 171 N. Y. 684.

*Matter of Curtis*, 31 Misc. 83; 64 Supp. 574.

And also when owned by a nonresident prior to 1911.

*Matter of Hellman*, 174 N. Y. 254; 66 N. E. 809.

e. INTEREST OF NONRESIDENT IN ESTATE OF DECEASED NON-RESIDENT.

Where a nonresident died leaving a legacy to another nonresident who died the next day, the interest of the deceased devisee in the estate of the testator had not been determined and therefore was not property within the State.

*Matter of Zefita*, 167 N. Y. 280; 60 N. E. 508.

*Matter of Thomas*, 3 Misc. 388; 240 Supp. 713.

But where a nonresident bequeathed the residuary to his son, also a nonresident, and the son died after the amount of the residuary estate had been ascertained, though still in the hands of the executors, it was held that the interest of the son was property within the State transferred at his death and taxable.

*Matter of Clinch*, 180 N. Y. 300; 73 N. E. 35.

So, in Pennsylvania, when a brother of the decedent, who was a resident of New York, died two weeks before his sister, who was a resident of Pennsylvania, it was held that the sister inherited at the moment of the brother's death, and that it was wholly immaterial that the net amount of his estate had not been ascertained.

*Milliken's Estate*, 206 Pa. St. 149; 55 A. 853.

f. PARTNERSHIP INTEREST.

The interest of copartners is in the surplus after payment of debts, and is therefore intangible, even if the copartnership owns real estate.

*Darrow v. Calkins*, 154 N. Y. 503; 49 N. E. 61.

*Russell v. McCall*, 141 N. Y. 437.

*Preston v. Fitch*, 137 N. Y. 41.

*Menagh v. Whitehall*, 52 N. Y. 146.

*Secor v. Tradesmen's National Bank*, 92 App. Div. 294.

It was long held by the Comptroller of New York that under this doctrine, real estate owned by a partnership,

though situated outside the State, is to be included in the valuation of the assets of the firm in which a decedent had an interest.

*Matter of Dusenberry*, 2 N. Y. State Dept. Rep. 501.

But a recent case in that State has ruled to the contrary.

*Matter of McKinlay*, 166 Supp. 1081.

The interest of a nonresident in a New York partnership is taxable under the present New York statute, chapter 664, L. 1915.

*Matter of Du Bois*, N. Y. L. J., February 9, 1917; 163 Supp. 668.

The same rule prevails in Pennsylvania by judicial construction.

*In re Small*, 151 Pa. St. 1; 25 A. 23.

A recent case in Massachusetts presented a rather complex problem. Shares in a foreign partnership trust were held taxable in Massachusetts because the declaration of trust provided for the ultimate conversion of the realty into personalty, after constituting the realty and personalty as one fund. The conversion was held to date from the beginning of the trust. When the partnership interest was in the nature of a lien upon the real estate it was held taxable as personalty against a resident decedent. On the other hand, where the copartnership interest is merely an undivided right in or title to the land itself, it is not personalty, and therefore is not taxable against the resident decedent.

*Dana v. Treasurer*, 227 Mass. 562; 116 N. E. 941.

Where copartners take title to real estate in their individual names, as tenants in common, it does not become partnership property in the absence of evidence of intent.

*Matter of Lowenfeld*, N. Y. L. J., June 27, 1916.

But where real estate is purchased with partnership funds and the title is taken in the name of one of the part-

ners a resulting trust arises in favor of the other partners in proportion to their interest in the partnership.

*People v. Sholem*, 244 Ill. 502; 91 N. E. 704.

Local assets of a partnership with its main office in Boston and branch office in New York are taxable in New York.

*Matter of Clark*, N. Y. L. J., February 9, 1912.

## B.— AS TO VALUE.

Though the tax is on the transfer and not upon the property the value of the property transferred is used as a yardstick whereby to measure the value of the transferred interest. The value must, unless the statute specifies otherwise, be at the date of death and no subsequent change can affect it.

*Hanberg v. Morgan*, 263 Ill. 616; 105 N. E. 720.

*Matter of Penfold*, 216 N. Y. 163; 110 N. E. 497.

### 1. Where the Value at Death Cannot be Ascertained.

It is often impossible to ascertain the value at the date of death. A claim of the estate may be involved in litigation, in which case taxation must be suspended.

*Matter of Westurn*, 152 N. Y. 93, 103; 46 N. E. 315.

*Matter of Skinner*, 106 App. Div. 217; 94 Supp. 144.

Or the claim may be an interest in the estate of another decedent which has not yet been settled.

An interesting question recently arose under such suspension of taxation in the estate of Mary D. Daly, which consisted chiefly of her interest in the estate of her deceased husband, Augustine Daly, the playwright.

The Surrogate's opinion, reported in the *New York Law Journal* of July 28, 1916, is in part as follows:

“An order was entered on a transfer tax appraiser's report on December 30, 1908, which, among other things, suspended from appraisal and taxation decedent's interest

in the estate of Augustine Daly, her deceased husband. The grounds of such suspension were stated to be that the value of this interest was not then ascertainable. A supplemental report was subsequently filed from which it appears that said interest was valued at \$82,530.48, and that the date of accrual was therein fixed as of June 30, 1914. From this report and the order entered thereon fixing tax the executor appeals. The principal question involved in the appeal is whether the value of the interest above referred to should be considered as of the date of decedent's death or at the time the last payment was made under the terms of which the said two estates settled their differences and which was the date designated by the appraiser to be the date of accrual. In view of the fact that at an earlier date it was impossible to fix the value of the decedent's interest in her husband's estate, we must then inquire, What was the date at which the value of this interest could be ascertained? Apparently the date when the parties by the agreement mentioned made the last payment. This payment represents the value of decedent's interest in her husband's estate at the time of her death, although at that time not ascertainable."

But where there is no means whereby the value can be more certainly ascertained in the future taxation will not be suspended. In illustration of this principle the New York County Surrogate said:

"There is also the further element of uncertainty caused by the right of the surviving partner of the firm to retain all the firm assets for three years after the date of decedent's death, and to use the interest of the deceased partner as if it belonged absolutely to the survivor. If the surviving partner were unfortunate in his investments during those three years, he might materially reduce the value of the interest of the decedent in the firm; if he were fortunate, he might considerably augment the value of

that interest. But it is not upon the value of the interest that is finally paid over to the legatees that the tax is imposed, but upon the value of the interest transferred at the date of decedent's death. (*Matter of Davis*, 149 N. Y. 539; 44 N. E. 185; *Matter of Penfold*, 216 N. Y. 163; 110 N. E. 497; Ann. Cas. 1916 A, 783.)

“If the contention of the State Comptroller were upheld and taxation of the interest of the decedent in the firm of Thomas H. Hubbard & Co. suspended until three years after his death, the tax imposed would not be upon the value of the property transferred by the will of the decedent, but upon the value of that property as augmented or diminished by the operations of the surviving partner for the period of three years. In other words, some further speculation may yet lend value (although this is doubtful) to this unsuccessful railway scheme. But that fact ought not to be allowed to affect the proved valuation of General Hubbard's estate at the time of his demise.

“Upon this appeal evidence was submitted that the securities deposited by the firm as collateral for the 6% trust notes were returned to the firm upon the maturity of the notes, but there is no proof of the new liability incurred by the firm at that time, or the new arrangement made by the firm for the payment of the notes and the release of the securities.

“I am inclined to think that the cases cited by the attorney for the State Comptroller in support of his contention that the appraisal should be suspended are distinguishable from the matter under consideration. In the *Matter of Westurn*, 152 N. Y. 93; 46 N. E. 315, it was alleged by the executor that a note was due the decedent, but the maker of the note denied the obligation. It was held that taxation on the amount of the note should be suspended until it was determined that it was really a debt due the estate. In the *Matter of Skinner*, 106 App. Div. 217; 94 N. Y. Supp.



144, it was held that the value of a claim then in litigation should be suspended until the termination of the litigation. In the *Matter of Zefita*, 167 N. Y. 280; 60 N. E. 598, it was held that a tax cannot be imposed upon a legacy of a residuary estate until the amount of the estate or interest is ascertained.

“In the matter under consideration there was no claim in litigation at the date of decedent’s death; there was no uncertainty as to whether a claim was valid or invalid, and there was no means by which the value of the decedent’s interest could in the future be more definitely determined than at the date of his death.”

*Matter of Hubbard*, 103 Misc. 125; 169 Supp. 325.

## 2. Real Estate.

The assessed value for ordinary taxation is not controlling on the market value which is the test for inheritance taxation.

*Sevier’s Exrs. v. Commonwealth*, 181 Ky. 49; 203 S. W. 1070.

*Warner v. Corbin*, 91 Conn. 532; 100 A. 354.

*McGhee v. State*, 105 Ia. 9; 74 N. W. 695.

But in practice a wide discrepancy between the value fixed by an expert appraiser and the assessed valuation, equalized to 100% basis would require explanation.

When obtainable an actual *bona fide* sale of property in the vicinity prior to death is the best evidence.

*Matter of Arnold*, 114 App. Div. 244; 99 Supp. 704.

See New York Decedents’ Estate Law, § 122.

The appraisal is of the market value at the date of death; though evidence of the sale of property in the vicinity shortly after death is competent, but the price realized on a forced sale is not a fair test of market value.

*Matter of Paterno*, 182 App. Div. 478; 169 Supp. 765.

It is the equity of redemption only that is taxed and mortgages should be deducted from the value of the real estate.

*Matter of Sutton*, 3 App. Div. 208; 38 Supp. 277; aff. 149 N. Y. 618; 44 N. E. 1128.

And this is so even when the will directs that the mortgage be paid out of personalty.

*Matter of Offerman*, 25 App. Div. 94; 48 Supp. 993.

*Matter of Murphy*, 32 App. Div. 627; 53 Supp. 1110; affirming on opinion in *Matter of Offerman*; aff. 157 N. Y. 679; 51 N. E. 1092.

When testator's will directs that a mortgage on foreign real estate be paid out of local personal assets it was allowed as a debt of the estate by the Surrogate's Court of New York County.

*Matter of Hunt*, 97 Misc. 233; 160 Supp. 1115.

This case is of doubtful authority, for it has long been held that even taxes due on foreign real estate are not a deduction from the personal assets.

McElroy on the Transfer Tax Law, p. 488.

And it has since apparently been overruled in *Matter of George W. Vanderbilt*, 104 Misc. 511, where a mortgage on foreign real estate was held not to be a deduction from the personal property of the testator within the State.

The theory is that for the purpose of the transfer tax the parties interested in the estate take their interest in the property in the form it had at the death of the decedent, and no direction in the will as to the application of the personalty for the benefit of the realty can defeat or qualify the rights of the State in the imposition and collection of the tax.

*Matter of Livingston*, 1 App. Div. 568; 37 Supp. 463.

*Matter of Baudouine*, 5 App. Div. 622; 39 Supp. 1121.

*Matter of Kemp*, 7 App. Div. 609; 40 Supp. 1144; aff. 151 N. Y. 619; 45 N. E. 1132.

While sales of property in the neighborhood shortly prior to the testator's death are the best evidence of value, the price for which the property itself sells after death is of doubtful value if remote and the fact that it sells for less than the amount of the appraisal is not ground for modifying the taxing order after the time to appeal has expired.

*Matter of Meyer*, 209 N. Y. 386; 103 N. E. 713.

*Matter of Barnum*, 127 App. Div. 418; 114 Supp. 33.

The uncontradicted affidavit of an expert is sufficient proof of value, if received without objection.

*Matter of Gale*, 83 Misc. 686; 145 Supp. 301.

The interest of the decedent and its nature must be established before the appraiser by competent evidence.

*Matter of Willets*, 119 App. Div. 119; 100 Supp. 850; 104 Supp. 1150; aff. 190 N. Y. 527; 83 N. E. 1134.

Where the decedent owned an undivided interest in real estate, subject to certain mortgages, a discount of 15% was allowed by the appraiser on the value of the interest because a judicial sale would be necessary to realize on it. It was claimed on appeal to the Surrogate that the deduction should be made of the 15% from the equity of redemption after the amount of the mortgage had been deducted; but it was held that it was the entire property that must be sold and not the equity and therefore that the deduction from the entire value was correct.

*Matter of Gibert*, 176 App. Div. 850.

Where there was a devise of a one-seventh interest in undivided lands it was held proper to appraise it at one-seventh of the value of the entire property.

*Wingert v. State*, 129 Md. 28; 98 A. 224.

An instructive case in the valuation of fractional interests in real estate arose before the New York County Sur-

rogate in *Matter of Meyer Loeb*, N. Y. Law Journal, January 13, 1914: "This is an appeal from an order fixing tax upon the ground that the appraiser erred in his valuation of decedent's real estate. An expert employed by the State Comptroller submitted an affidavit giving his estimate of the value of certain real estate of which the decedent was entitled to a one-half interest, but he did not give the value of the one-half interest. On behalf of the estate an affidavit was submitted giving the opinion of another expert as to the value of the one-half interest. It appeared from the evidence of this expert that the value of the one-half interest is less than one-half the value of the entire plot. The appraiser disregarded this evidence and ascertained the value of decedent's one-half interest to be one-half the value of the entire plot as appraised by the State Comptroller's expert. This was incorrect, as the only evidence before him was to the effect that the one-half interest is worth less than one-half the value of the entire plot. The order fixing tax will be reversed and the appraiser's report remitted to him for the purpose of ascertaining the value of decedent's one-half interest in the real estate of which he died seized."

### 3. Tangibles.

#### a. PICTURES.

The valuation by an expert as of the date of death was held the best evidence and the price for which the pictures actually sold ten months afterwards was held not competent to contradict it.

*Matter of Anderson*, N. Y. L. J., December 20, 1916.

#### b. FURNITURE.

An instructive decision was recently made by the New York County Surrogate's Court on the valuation of the

collection of antique furniture owned by the late Richard Canfield, formerly of Saratoga, New York, but at the time of his death a non-resident.

The Surrogate's opinion (96 Misc. 119; 159 Supp. 735) is as follows:

“At the time of his death he had his domicile in Rhode Island. He owned a collection of antique furniture which was located in this State and a competent appraiser made an affidavit in which he alleged that the market value of such furniture at the date of decedent's death was \$65,175. Testimony disclosed that this furniture was sold in August, 1915, for \$159,999, and the appraiser accepted these figures as the value of the furniture for the purposes of the transfer tax. The affidavit submitted by the expert employed by the estate was the only evidence as to the value of the furniture at the date of decedent's death. The State Comptroller did not produce testimony to show that the appraisal by the expert was incorrect but relied upon the testimony as to the price for which the furniture sold in August, 1915. \* \* \* As the only competent testimony submitted to the appraiser in regard to the value of the furniture showed that its market value at the date of decedent's death was \$65,175, he should have accepted that valuation and not the price at which it was sold nine months later. The decedent also owned certain porcelains which were appraised by the expert employed on behalf of the estate at \$12,915. The appraisal represented their value at the date of decedent's death. The executor submitted an affidavit showing that the porcelains were sold for much less than their appraised value but the transfer tax appraiser accepted the value of \$12,915. This was correct.”

c. JEWELRY.

In *Matter of Moore*, 97 Misc. 238; 162 Supp. 213, the question of the value of the stock of Tiffany & Co. was in question. On this subject the Surrogate said:

“The par value of this stock is \$1,000 a share and the appraiser reported that its market value at the date of decedent’s death was \$7,683.45 per share. The stock is not customarily bought and sold in the open market. The sale of three shares in 1914 at an average price of \$5,570 a share cannot be accepted as the market value of the stock on the 30th of March, 1914, the date of decedent’s death, as the record does not show the circumstances under which the sale was made. The appraiser was therefore obliged to rely upon the statement of assets and liabilities of the company in ascertaining the value of the stock. In this statement the company claims that the sum of \$2,300,000 should be deducted from the assets as a reserve fund. The appraiser allowed a deduction of \$2,102,463.48 as a reserve against depreciation and refused to allow the other reduction. The value of the assets represented the cost price of the goods purchased by the company, plus the expenditures made for labor in preparing them for sale. The reserve for depreciation represented the amount which the company considered reasonable as a reserve fund in view of the fact that the goods sold by the company consist almost exclusively of luxuries. Nothing is more fickle than fashion and the taste in luxuries. The design or style of many of the most costly articles may suddenly become obsolete and necessitate the employment of considerable labor and expense in making such articles conform to the fashion or popular taste for the time being.

This reserve for depreciation is therefore a reasonable deduction from the assets of the company; but for the purpose of ascertaining the value of the stock, the reserve maintained against possible loss by theft, smoke, etc., should not be deducted, as this is a reserve for contingencies that may never happen, and no evidence was submitted to the appraiser to show that the company had ever lost any of the amount reserved for contingencies.

The appraiser therefore was correct in refusing to deduct this special reserve of \$2,300,000 from the assets of the company.”

#### 4. Notes and Other Obligations.

These must be appraised at market value according to the evidence adduced. In reversing an appraisal as against the weight of evidence the court said: “This is not a case, as assumed by the appellant, within *Matter of Gibert*, 176 App. Div. 850; 163 N. Y. Supp. 974, where the appraiser has arbitrarily disregarded all the evidence, and there was nothing before him, or before the Surrogate, on which to base a different conclusion; for here were the book entries, which afforded some guide, taken in connection with the opinions of the appellants’ experts. But the determination that this note was worth its face value, and that the stock of this corporation had any value, was contrary to the weight of the evidence, and the decree should be reversed, and the appraiser’s report remitted to him, for the purpose of correcting the value of the 17 shares of stock held by the decedent in the Contracting Company and correcting the value of the note in question.”

*Matter of Paterno*, 182 App. Div. 178; 169 Supp. 765.

#### 5. Stocks.

##### a. ACTIVE SECURITIES.

When the securities are actively dealt in on the market the average price for a reasonable period before and after death is the best measure of value.

*Matter of Crary*, 31 Misc. 72; 64 Supp. 566.

*Matter of Proctor*, 41 Misc. 79.

*Matter of Chambers*, 155 Supp. 153.

In New York the statute requires this basis of appraisal.

See Decedents’ Estate Law, *post*, § 122.

And this is so even though the estate holds large blocks of stock which might depress the price if sold all at once.

In discussing this question the Illinois court says in *Walker v. People*, 192 Ill. 106 at page 110; 61 N. E. 489:

“Fair market value has never been construed to mean the selling price of property at a forced or involuntary sale. The very fact that the market would be depressed by forcing such large blocks of stock to sale indicates that such a sale is not a proper test of the fair cash value of the stock \* \* \*. The quotations of the stock exchange may be temporarily uncertain and untrustworthy, if the sales thereon are suddenly affected for speculative purposes or by the forcing upon the market and to sale of large blocks of stock in an extraordinary manner with no explanation of such action and when the purpose of it is left to the conjecture of those dealing in the stocks; but such quotations may be a fair and safe guide when they are taken for a reasonable period of sales made in the usual and ordinary course of business.”

*Walker v. People*, 192 Ill. 106, 110; 61 N. E. 489.

The same rule prevails in New York. The court said in *Matter of Gould*, 19 App. Div. 352; aff. as to this point 156 N. Y. 423; 51 N. E. 287:

“It is claimed, however, that the rule should be construed that when the value of large blocks of stock is involved only the purchase and sale in markets of correspondingly large blocks of stock should be considered, upon the theory that such large blocks would necessarily sell at lower rates than small quantities of stock sold separately, and that throwing large blocks of stock upon the market all at once would have a tendency to produce a break in the market and perhaps an inability to get more than a mere nominal price offered for that stock. Under the construction contended for the securities involved in



this proceeding might have been shown to be of little or no value.”

To the same effect is *People v. Coleman*, 107 N. Y. 541; 14 N. E. 431, where the court said:

“The market value of shares of capital stock may sometimes be above and sometimes below the actual value. Such value may be greatly advanced or depressed for speculative purposes without any change in the actual value; but the market value of any stock which is listed at the Stock Exchange in New York and largely dealt in from day to day for a series of months will usually furnish the best measure of value for all purposes. The competition of sellers and buyers, most of them careful and diligent to take account of everything affecting the value of the stock in which they deal, and each mindful of his own interests and seeking for personal gain or advantage, will, almost universally, if time sufficient be taken, furnish the true measure of the actual value of the stock.”

See also

*Matter of Chambers*, 155 Supp. 153.

*Matter of Kennedy*, 155 Supp. 192.

#### b. INACTIVE SECURITIES.

A problem is often presented where the corporation has a large number of stockholders and extensive properties and yet its shares are seldom dealt in on the market. For example many railroads which are branch or connecting lines seldom appear in the quotations, yet it would be absurd for an appraiser to undertake a valuation of their properties for the valuation of a few shares unless the circumstance of incorporation in several States required it under the rule established in New York, Massachusetts and New Hampshire as to the Boston and Albany and Fitchburg roads. Stock in National banks is of a similar

nature, held by many stockholders yet not an active or speculative security. Such corporations are not to be confused with the incorporated co-partnerships or "family corporations" whose securities are classed as "closely held stock." Their values have been established by time and publicity. Published financial statements, dividends, private sales and opinion evidence afford sufficient means for ascertaining their worth.

### c. CLOSELY HELD STOCK.

Obviously the market price cannot determine its value — for often there is no market price. An entirely different method must be employed in ascertaining its value and in such case the fact that the estate holds large blocks of the stock and whether it could be sold are elements to be considered.

*Matter of Chappell*, 151 App. Div. 774; 136 Supp. 271.

It was recently held in California that the fact that minority stock was converted into majority stock by its transfer from the deceased to the beneficiary, who was also a large stockholder did not affect the appraised value. This must be determined, as in other cases of closely held stock by the value of the property of the corporation which the shares of stock transferred represented.

*Felton's Estate*, 176 Cal. 663; 169 Pac. 392.

The selling price of a few shares of such stock is of little value in determining the actual worth.

*Matter of Curtice*, 111 App. Div. 230; 97 Supp. 444; aff. 185 N. Y. 543; 77 N. E. 1184.

Where there had been but two sales in six months held error to take the average price.

*Matter of Malcolmson*, N. Y. L. J., June 20, 1912.

But where there were four sales though not on the

exchange of 100 share lots shortly prior to death the evidence was held to establish a market price and in such a case it was error to take evidence of book value.

*Matter of Eugene Pitou*, N. Y. L. J., February 14, 1914.

It was error to value the stock at the price bid on the date of death; the average price fixes the market value.

*Matter of J. S. Kennedy*, N. Y. L. J., March 8, 1911.

And of course it must be the price bid and not the price asked in the absence of actual sales.

*Matter of Clark*, 163 Supp. 972.

Evidence of sales two years prior to death is too remote.

*Matter of Valentine*, 147 Supp. 231.

In the absence of sufficient evidence of market price the intrinsic value from the assets and debts must be ascertained.

*Matter of Achelis*, N. Y. L. J., March 9, 1912.

The entire subject of the valuation of such stock and the kind of evidence by which it may be determined was recently illustrated in the valuation of stock in the Pabst Brewery which was owned almost exclusively by its founder and his family. In *State v. Pabst*, 139 Wis. 561, the court says, at page 593:

“The court’s finding as to the value of the stock in the brewing company is excepted to as erroneous. The court found the value of the brewing company’s stock on June 1, 1904, the date of the decedent’s death, to be \$1,150 per share. The appraisers appointed by the County Court reported the same value in January, 1905. The County Court, upon the trial, valued it at \$1,408.45 per share. The face value is \$1,000 per share. The law requires that the tax shall be assessed upon the clear market value of the property. It appears that there had been no general sales

of this stock in the market. On various occasions, when he secured stock for the corporation or when there were dealings between members of the family, the decedent had dealt with this stock on the basis of its book value. The transfers shown were apparently made in reliance on the book value. The evidence adduced showed the dividends declared and paid for the years 1896-1904 inclusive, and the value of the corporation's assets from 1896 to 1904 inclusive, exclusive of the good will of the business. In the deed of gift decedent declared the book value of 2,840 shares of stock to be \$4,000,000. These items of evidence were offered as the best proof attainable to show the value of the stock. They were evidences of value though they were not direct and general tests of market value. Many and various reasons are assigned why the evidence adduced on stock value fails to sustain the court's findings as to the value of the stock. These contentions are based on the claims that dividends have been small, that the brewing plant has no convenient shipping facilities, that the stock transfers and value of the corporation's assets as shown on the books are not reliable criteria because they represent no more than the decedent's estimate of his business and because there are no proper and necessary deductions for depreciation, losses, decrease in business and other causes incident to the conduct and operation of so large and extensive an enterprise and its holdings. Special probative force is claimed for the opinion evidence of values adduced by appellants as tending to show that the stock is worth less than its face value. After giving full effect to these considerations, we cannot say that the court erred by over-estimating the actual value of the stock. The facts and circumstances regarding the business of the corporation and its properties, the progress, growth, and general financial results, furnish a basis for valuation. These evidences of the value of the stock are suffi-

cient to sustain the conclusion of the trial court, and the findings of fact on this branch of the case must stand.”

*State v. Pabst*, 139 Wis. 561, 593; 121 N. W. 351.

The cases in New York when similar questions have arisen follow similar lines.

The price at which such stock was appraised in another State or even in another proceeding it is not competent evidence.

*Matter of Willmer*, 75 Misc. 62; 134 Supp. 686; aff. 153 App. Div. 804; 138 Supp. 649.

Dividends actually paid are to be considered but are not controlling.

*Matter of Smith*, 71 App. Div. 602; 76 Supp. 185.

Earning power is a factor.

*Matter of Brandreth*, 28 Misc. 468; aff. 169 N. Y. 437; 62 N. E. 563.

The rule to determine the value of closely held stock is the same as with co-partnerships.

*Matter of McMullen*, 92 Misc. 637; 157 Supp. 655.

Proof of profits or losses after death not competent, except for purposes of comparison.

*Matter of Demarest*, 157 Supp. 653.

When the business must be sold executor's commissions should be deducted in determining the value.

*Matter of Weatherbee*, 157 Supp. 652.

The market value of merchandise on hand and bills receivable should be considered.

*Matter of Hyman*, N. Y. L. J., May 22, 1914.

Book value may be a basis for the valuation. Appraiser sustained and Surrogate reversed where it was followed by appraiser.

*Matter of Valentine*, 163 App. Div. 843; 147 Supp. 1146.

But book value may be a very uncertain criterion especially if the concern has over-valued its assets for purpose of securing credit or "insurance purposes," as some business men naively put it.

The learned Surrogate who was reversed in the *Valentine* case soon had an opportunity to point this out. In *Matter of Pancost*, 89 Misc. 110; 152 Supp. 724, he says:

"This appeal by the executor of decedent's estate brings up for review the finding of the appraiser as to the value of the shares of stock in the Jersey City Galvanizing Company held by the decedent at the time of his death. It is conceded by the executor that the statement of assets and liabilities of the company which is attached to the appraiser's report is a correct transcript from the books of the company. If the valuations contained in this statement were correct, the book value of the stock would be about \$186 a share. The president of the company testified, however, that the value of the assets as entered on the books of the company was not correct, that the values were 25 to 50% higher than the actual values, and that they were retained on the books for the purpose of assisting the company in obtaining credit.

"When the corporation wishes to obtain credit, it refers to its books, which show net assets of \$149,022, or a value of \$186 a share. When the State attempts to assess a tax upon the interest of a stockholder in the company, the president of the company testifies that the actual value of the assets is about 50% of the book value, and that the value of the stock is only about \$50 a share. I regret to say that in law little credence can be given to the evidence of persons who make such admissions of deliberate misrepresentation. There may be extenuating facts not presented of record. It is difficult for the Surrogate to reconcile the conflicting statements of value, and therefore it is practically impossible to arrive at a valuation that is more

than approximately correct. The testimony in regard to alleged sales of stock is not conclusive, as such sales were not made in the open market, and the price at which the sales were made five years after the date of decedent's death cannot be taken into consideration in a proceeding to ascertain their value at the date of his death. I cannot, therefore, find from the evidence in this matter that the appraiser's valuation of \$125 a share is excessive. The order fixing tax will be affirmed."

The uncertainties incident to appraisal on the basis of book value were again illustrated before the same Surrogate in *Matter of Bach*, 147 Supp. 229, where the appraiser had deducted 50 points from the book value in fixing the market value of the stock. The Surrogate remitted the report with directions to reduce the book value by 20 points instead of 50.

On another occasion he thus states the difficulties of the situation: "I do not feel that there is any legal principle which would enable me to decide that the appraiser's valuation of the stock held by the decedent, although it varies considerably from the book value, is incorrect."

*Matter of Frost*, N. Y. L. J., May 1, 1914.

In *Matter of Roos*, 90 Misc. 521; 154 Supp. 939, the Surrogate said:

"The corporation was a close one. The stock was not listed and no sales of it had ever occurred prior to the death of the decedent other than those when the corporation was originally formed. Where such a condition obtains it is difficult to fix the value of the stock, and it is often possible to get at it only by ascertaining the value of the property which it represents (*Matter of Jones*, 172 N. Y. 575; 65 N. E. 570), and even then it can be ascertained only with reasonable certainty (*Matter of Rees*, 208 N. Y. 590, affirming order of Surrogate without opinion)."

The corporate books should be put in evidence.

*Matter of Crawford*, 85 Misc. 283; 147 Supp. 234.

Prices quoted on a local exchange are competent evidence though the stock is not listed or dealt in elsewhere.

*Matter of Cook*, 50 Misc. 487; 100 Supp. 628; aff. 187 N. Y. 253, 262; 79 N. E. 991.

Evidence of actual sales about the time of death may outweigh the report of a financial investigator.

*Matter of Newman*, 91 Misc. 200; 154 Supp. 1107.

The fact that the decedent was a minority stockholder will not justify a valuation of shares of minority stock at less than the value of the shares of stock in the hands of a majority owner.

*Matter of Delafield*, N. Y. L. J., January 24, 1916.

## 6. Bonds.

Such securities are subject to the same classification as stock. Though less frequently dealt in their rate of interest and the value of the security give them easily ascertainable value when issued by public corporations or railroads. On the other hand, when they are issued by a corporation substantially as preferred stock some examination of the corporate assets may be advisable. These questions present so few practical difficulties that the valuation of bonds has produced little or no litigation.

## 7. Pledged Securities.

### a. AS TO THE NONRESIDENT PLEDGOR.

In the *Matter of Pullman*, 46 App. Div. 574; 62 Supp. 395, the court said: "These securities are liable to be resorted to by the creditors. In pledge the title to them is in the pledgee and they are not in a situation to be taxed now as property of the estate of Mr. Pullman. All of their



amount may be required to pay the debts to which these bonds and stocks are collateral and the creditors' security should not be diminished at this time."

In *Matter of Havemeyer*, 32 Misc. 416; 66 Supp. 722, the Surrogate took a similar view:

"The stock deposited by the decedent with his brokers as extra collateral for the loan of \$600,000 was not the property of the decedent, but formed a portion of an estate created by the decedent under a valid trust instrument, the terms of which were not revocable at his election, except with the consent of the beneficiaries of the trust."

To the same effect is:

*Matter of Parsons*, 51 Misc. 370; 101 Supp. 430; aff. 117 App. Div. 321; 102 Supp. 168.

But when the executor has redeemed the securities prior to the institution of the tax proceedings they are taxable.

*Matter of Hurcomb*, 36 Misc. 755; 74 Supp. 475.

#### b. AS TO THE PLEDGEE.

In *Matter of Guggenheim*, New York Law Journal, July 29, 1916, a note belonging to decedent was secured by collateral. The note was for \$261,119.60; and, at the date of death, the collateral was worth \$158,200. The note was not due until a year after the death of the testator. At its maturity the value of the collateral had diminished and it was then worth only \$62,000. This was all that was realized on the note, the maker being irresponsible. On the theory of the *Pullman* case the appraiser held that the value of the note was measured by the value of the collateral at the date of death and appraised it at \$158,200. On appeal to the Surrogate it was held that the title to the collateral was not in the decedent and did not pass to his estate; that the loss in the value of the collateral was not a loss of the estate; and that the value of the note, at the death of the

testator, was its value as finally determined by the amount received on the sale of the collateral, at the maturity of the note. The value as fixed by the appraiser was therefore reduced from \$158,200 to \$62,000.

### 8. Partnerships.

Generally the valuation of copartnership property involves the same problems as to book value, earning power, depreciation of assets and value of good will that are involved in appraising closely held stocks.

The title vests in the surviving partner and all that the executor can claim is the equitable interest in the surplus after the payment of all debts.

*Williams v. Whedon*, 109 N. Y. 333; 16 N. E. 365.

A special partner is, in a sense, a creditor.

*Matter of Clark*, N. Y. L. J., February 9, 1912.

An agreement between partners as to the value of the copartnership interest and what a retiring partner shall have, whether the retirement be by death or otherwise, often has a material bearing upon the valuation.

*Matter of Borden*, 95 Misc. 443; 159 Supp. 346.

*Matter of Vivanti*, 138 App. Div. 281; 122 Supp. 954.

*Matter of Hellman*, 172 Supp. 671; aff. 226 N. Y. mem.

But an agreement that the surviving partner shall take all or a material portion of the assets, or may buy the decedent's share for a materially lower valuation than it is worth is an agreement to take effect at death and would seem to be taxable.

*Matter of Cory*, 177 App. Div. 871; 164 Supp. 956; aff. 221 N. Y. 612.

*Matter of Orvis*, 179 App. Div. 1; 166 Supp. 126; aff. 223 N. Y. 1; 119 N. E. 88.

Where the testator bequeathed to his partners his interest in the partnership assets on condition that they pay 90%

of its appraised value to his executors in 15 equal annual instalments, the probate court made a finding that the inheritance tax should be fixed from time to time as the money or property of the estate should come into the hands of the executors and not at the present value of future payments to be made by the partners.

*Port Huron v. Wright*, 150 Mich. 279; 114 N. W. 76.

Where a partner had sold out his interest the continuing partner held the assets of the firm as trustee. Upon his death his executors were substituted as trustees. It was properly held that the trust fund was no part of his estate.

*Matter of Hamilton*, 100 Misc. 61.

A recent case before the New York County Surrogate's Court illustrates some of the difficulties in the valuation of copartnership assets from the examination of the firm books by an accountant. The court thus criticises the methods adopted:

“The decedent was a member of the firm of Milmine, Bodman & Company, which has been established in this city for more than thirty years. For the purpose of enabling the appraiser to ascertain the value of decedent's interest in the firm an affidavit was submitted by an accountant in which he states that the figures given by him in relation to the assets and liabilities of the firm are ‘accurate statements from the books of the copartnership.’ He subsequently states that deduction ranging from 5% to 10% had been made by him as depreciation from the value of the assets. If the figures given by him are ‘accurate statements from the books of the copartnership,’ then his conclusion as to the value of decedent's interest is incorrect, because he fails to make any deductions from the figures supposed to have been taken from the books of the firm. If he has made the deductions, then the figures given

by him cannot be 'accurate statements from the books of the copartnership.' In ascertaining the value of the merchandise on hand the accountant has taken the cost price of wheat, barley, oats and grain. This is incorrect, as it is the market price of the merchandise at the date of decedent's death which should be taken in ascertaining the value of decedent's interest in the firm. The accountant states that there is no good will, because the firm does not do business with the public. This statement seems to be inconsistent with accounts receivable of \$297,320 and accounts payable of \$191,247.93. There should be some explanation of these items. In ascertaining the value of the stock of the Rochester Cold Storage and Ice Company the accountant has deducted 5% from the cost price of the real estate owned by the company. This is incorrect, as the real estate should be appraised at its market value upon the date of decedent's death. The value of the merchandise owned by the Bodman-McConaughy Company is given at \$295,909.29, but it is not stated whether that amount represented the market value of the merchandise at the date of decedent's death. To justify the appraiser in appraising at \$68,151.58 the value of the note given by the Elk Creek Ranch Company to the decedent for \$81,594.71 there should be a verified statement of the assets and liabilities of the company as of the date of decedent's death. The appraiser's report will be remitted to him for further testimony in regard to the matters above referred to."

*Matter of Bodman*, 100 Misc. 390.

As to partnership real estate the rule seems well established that the interest of the deceased copartner, being in the surplus after the payment of debts, is personalty.

*McFarlane v. McFarlane*, 82 Hun, 238; 31 Supp. 272.

*Fairchild v. Fairchild*, 64 N. Y. 471.

*Van Brocklen v. Smeallie*, 140 N. Y. 70.

*Matter of Straus*, N. Y. L. J., October 9, 1911.

On the other hand, it has been held that, unless the partnership agreement expressly or impliedly refers to it, the copartnership real estate retains its character as realty with all the incidents of that species of property between partners themselves and also between a surviving partner and the real and personal representatives of a deceased partner, except that each share is impressed with the payment of debts and obligations of the partnership.

*Huber v. Case*, 93 App. Div. 479; 87 Supp. 663.

*Barney v. Pike*, 94 App. Div. 199; 87 Supp. 1038.

Partnership ownership is not a legal joint tenancy.

*Matter of Wormser*, 51 App. Div. 441; 64 Supp. 897.

Money loaned to a firm by one of the copartners is capital invested and not a mere copartnership interest, subject to accounting. It is to be valued like any other asset on the death of the creditor.

*Matter of Probst*, 40 Misc. 431; 78 Supp. 983.

Where a partner in a firm invested the profits with the firm and transferred this account to his wife to protect himself from his creditors, on the death of the wife a transfer tax should be assessed against the fund as her property.

*Matter of Anthony*, 40 Misc. 497; 82 Supp. 981.

A nonresident decedent sold his interest in a New York copartnership shortly before his death and took as part payment notes of the firm indorsed by the continuing partners. These notes matured after death and were paid by the firm to the widow in her individual capacity, who made affidavit that the deceased owned no property within the State; held not taxable, as there was no proof the notes belonged to decedent at the date of his death.

*Matter of Wallace*, 149 Supp. 354.

Profits due but not withdrawn held a part of the partner-

ship assets and to be taken into account in the valuation of the interest of the deceased.

*Matter of DuBois*, 163 Supp. 668.

Interest on capital invested by retired partners should not be included in estimating net profits.

*Matter of Weatherbee*, N. Y. L. J., November 5, 1913.

A partnership agreement which provides that there shall be no good will, or that good will shall not be taken into account in the valuation of a copartnership interest, though good as between the partners, is not binding upon the State Comptroller, and the good will remains a taxable asset despite the agreement.

*Matter of Halle*, 103 Misc. 661; 170 Supp. 898.

*Matter of Hellman*, 172 Supp. 671; aff. 226 N. Y. mem.

An allowance for bad debts should be made in appraising a firm's assets.

*Matter of Sandahl*, 171 Supp. 959.

## 9. Good Will.

### a. A TAXABLE ASSET.

When Dr. Johnson was selling the Thrale brewery he made the famous statement that it was not the material assets that he was putting up at auction but "the potentiality of growing rich beyond the dreams of avarice," and though the Thrale brewery no longer has any good will, it was obviously a valuable commodity a hundred years ago.

Good will consists of various elements:

1. The probability that old customers will resort to the old place.

2. Or if they do not "resort" that they will continue to be customers.

3. The advantage of continuing an established business at the "old stand."

4. The advantage of continuing a familiar name or style.
5. Reputation and prior advertising.
6. Pattern, styles, trademarks.

*Austen v. Boys*, 27 L. J. Ch. 714.

*People v. Roberts*, 159 N. Y. 70; 53 N. E. 685.

*Kramer v. Old*, 119 N. C. 1, 25 S. E. 813.

*Matter of Silkman*, 121 App. Div. 202; 105 Supp. 872.

Where a business was carried on by an administratrix in the name of the decedent the good will was held to be an asset in her hands.

*Matter of Mullon*, 74 Hun, 358; 26 Supp. 683.

The succession to the good will of a decedent's business in which he had an interest is therefore a taxable transfer.

*Matter of Jones*, 28 Misc. 356; 59 Supp. 983; 69 App. Div. 237; 74 Supp. 702; 172 N. Y. 575, 586; 65 N. E. 570.

*Matter of Vivanti*, 138 App. Div. 281; 122 Supp. 954; same case, 146 App. Div. 942; 131 Supp. 1148; aff. 206 N. Y. 656.

*Matter of Keahon*, 60 Misc. 508; 113 Supp. 926.

#### b. RULES FOR COMPUTATION.

Good will is elusive and in the nature of things cannot long endure as a thing apart from the enterprise and effort of the successors. While no hard and fast rules could be applied to the valuation of anything so ephemeral, several elements necessarily are to be considered.

The accepted method for computation is to take gross profits of the business for a number of years prior to death, usually at least three, and obtain an average, after deducting the reasonable value of the services of the deceased and 6% interest on the capital invested, and then multiply by the number of years' purchase.

*Matter of Ball*, 161 App. Div. 79; 146 Supp. 499.

*Matter of Ottman*, 166 Supp. 1078.

The valuation of the services of the deceased is often a vexatious problem, as the only testimony obtainable is from

those interested in the estate who are apt to exaggerate their importance. Much depends upon the nature of the business and how well it is established. The better established the business the less any one man's services are worth to it and proportionately the greater the value of the good will. The principle is justly founded but its application is often difficult.

In a recent case the New York Surrogate fixed the value of the services of the decedent at one-half the net annual profits or \$11,500, although he drew out only \$5,000 a year as salary.

*Matter of Crerand*, N. Y. L. J., June 30, 1914.

The valuation of the capital and the profits must be ascertained from the balance sheets of the years prior to death; but the subsequent balance sheets may be competent for purposes of comparison.

*Matter of Hirschberg*, N. Y. L. J., November 20, 1914.

An unusually good year for the firm is fairly taken into account when it was the year in which the partner died and the good times are likely to continue.

*Matter of Cohen*, 170 Supp. 156.

Good will is taxable where value is proved even though the partnership agreement provides that it shall be of no value in accounting between the partners.

*Matter of Hellman*, 226 N. Y. mem.

*Matter of Halle*, 170 Supp. 898.

### c. NUMBER OF YEARS' PURCHASE.

The annual value of the good will thus obtained must be multiplied by the number of years the evidence shows it may be expected to continue. In the absence of evidence to the contrary three years' purchase is customarily allowed.

*Page v. Ratchliffe*, 75 L. T. Rep. 371.

*Matter of Silkman*, 121 App. Div. 202; 105 Supp. 872.



But six and even ten years' purchase have been held not excessive when the evidence warrants it.

“Our courts have not adopted the rigid rule, established by the English courts, of limiting the value of good will to one year's purchase of the net annual profits of the business calculated on an average of three years (*Mellersh v. Keen*, 28 Beav. 453) or that three years' net profits of a business arbitrarily represents the value of its good will (*Page v. Ratcliffe*, 75 L. T. Rep. 371), but on the contrary incline to the more equitable rule that the value of good will may be fairly arrived at by multiplying the average net profits by a number of years, such number being suitable and proper, having reference to the nature and character of the particular business under consideration, and the determination of such proper number of years should be submitted to and determined by the jury as a question of fact, dependent upon the evidence before them in each action.”

*Von Au v. Magenheimer*, 115 App. Div. 84-87; 100 Supp. 659.

On the second appeal of the same case a verdict for six years' purchase was sustained in 126 App. Div. 257; 110 Supp. 629.

These rules were applied by the New York County Surrogate in *Matter of Flurscheim*, New York Law Journal, June 6, 1919, which involved the valuation of the good will of Franklin Simon Co. The appraiser valued the decedent's half of the firm's good will at \$291,289.98; but under the rules laid down by Surrogate Fowler the valuation of the decedent's share of the good will was increased to \$594,926.80. The opinion is instructive on many details of good will valuation and is in full as follows:

“This appeal is taken by the State Comptroller from the report of the transfer tax appraiser and the order assessing the tax on the ground that the interest of decedent as a co-

partner in the firm of Franklin Simon & Co. has been undervalued and that the amount allowed as a deduction from the gross estate as counsel fee is excessive. The decedent, who died August 18, 1914, and Franklin Simon were equal partners in the business, which was established in the year 1903 with a combined capital of \$110,000. At the date of death of decedent the net worth of the copartnership as shown by the books was \$1,477,519.31. The transfer tax appraiser has valued the interest of decedent in the firm at \$904,241.09, of which \$613,051.11 represents the decedent's capital and \$291,289.98 decedent's one-half interest in the good will. The appraiser has adopted as his estimate the valuation fixed by a certified public accountant, retained by the estate, which report is part of the record. The date fixed by the firm as the termination of the fiscal year was the first day of February. The books of the partnership as of August 1, 1914, show the assets of the concern to be of the value of \$1,755,757.82 and the decedent's capital account to be the sum of \$664,819.45. The accountant has not accepted the statement of the assets as shown by the books of the concern, but has applied to certain items depreciations which reduce the decedent's interest in the capital to the amount found by the appraiser as its value. The accounts receivable are set down in the books at the sum of \$657,817.27. The accountant has depreciated this item in the sum of \$43,986.68, which includes \$5,000 for bad or doubtful accounts, \$6,497.78 for carrying 50% of the accounts for a period of four months, and \$32,488.90, which represents 10% of the cost of collection for merchandise which was not paid for on delivery. There is no justification in the record for a depreciation in the accounts receivable to such an extent. The analysis submitted by the expert accountant shows that of the amount of \$649,778.02 outstanding on August 1, 1914, the sum of \$632,598.73, or all but \$17,179.29, was collected within three months thereafter. The accountant's report

does not show how much, if any, of the accounts receivable were uncollected four months after the death of the decedent. A depreciation of \$10,000 from the book value of this item would be ample to cover all contingencies. The inventory value of the merchandise is shown by the books to be the sum of \$595,500. This is arrived at by deducting 25% from the sales price. Whatever objections there may be to this method of ascertaining the value, it is stated by the accountant to be the plan adopted by other concerns dealing, as this firm does, in a great variety of articles, and perhaps it is as fair as any. The accountant, however, has reduced the inventory value as thus determined by 10%, or the sum of \$59,550, because he has found that certain articles were sold by the concern at less than what is called the usual selling price on which the calculation of the inventory value is based. The book value of the merchandise should prevail. The system by which it was determined is founded on the experience of the firm and its accuracy is not brought into question by the instances cited by the accountant. Three elements must be considered in the determination of good will — net profits, capital and the number of years' purchase. In the present case the appraiser has subtracted from the net profits for each year taken the difference between the price actually paid by the copartnership for the merchandise and its cost in case the firm had taken 30, 60 or 90 days to make payment. The adoption of this method leads to the absurd result as shown by the accountant's own report that, whereas in the fiscal year ending February 1, 1914, the actual net profits of the concern were \$338,299.51, there was a so-called loss by barter and trade of the sum of \$21,430.96, because the saving gained by discount of \$359,730.47 exceeded the net profits by that sum. It is obvious that the net profits in every case are shown by the difference between the actual cost of the merchandise and the selling price after deducting the cost of selling and

other proper charges, and are not dependent in any way upon what the concern *might have paid* for the merchandise. The report of the appraiser is erroneous in this particular. The appraiser has deducted from the net profits ascertained by him in the manner above shown, 6% interest on the average gross capital of the copartnership for the six and a half years beginning with the 1st of February, 1909, and terminating the 1st of August, 1914. For the purpose of determining the good will interest on the net capital only should have been deducted. The transfer tax appraiser has applied a multiple of three years to the sum ascertained by deducting from the net profits as found by him 6% interest on the capital and \$100,000 representing the value of the services of the decedent and the surviving partner, to which latter item no objection is made, and the amount appears to the court reasonable and proper. The sole reason assigned by the accountant and adopted by the transfer tax appraiser for not applying a larger multiple is because the firm was in existence at the death of the decedent only twelve and a half years. I do not think that this is a controlling factor. The record shows that the sales have increased steadily since the establishment of the copartnership. The sales for the three complete fiscal years preceding decedent's death were respectively \$3,986,859, \$5,003,364 and \$5,919,925. In the year prior to the death of decedent \$219,858.82 was the sum spent for advertising. The firm is extremely well and favorably known. It has succeeded in establishing a reputation in the community which might not be gained by other concerns in business many years longer. Under all the circumstances I think a five years' purchase should be applied in fixing the good will. The value of decedent's interest in the copartnership should be determined in the following manner: From the average net profits of \$400,990.70 for the three complete fiscal years preceding the death of decedent should be deducted 6% on the average net capital of

\$1,053,333 employed for the same period, amounting to \$63,019.98, and \$100,000 for salaries of the two partners. The difference, or \$237,970.72, multiplied by 5, is \$1,189,853.60, the value of the good will. One-half of this sum, \$594,926.80, added to the amount of decedent's capital account of \$659,819.45 (book value, less \$5,000 deduction from inventory) is \$1,254,746.25, the value of decedent's interest in the copartnership at the date of his death. The charge of \$75,000 counsel fee is, in my opinion, excessive. The estate was not difficult of administration, and no more than \$25,000 should be allowed as a deduction. The report of the appraiser is remitted to him for revision and correction, in accordance with this decision. Settle order on notice."

In *Matter of Moore*, 97 Misc. 238; 162 Supp. 213, the value of the good will of Tiffany & Co. was involved, and the Surrogate held that ten years' purchase was a fair multiple. He said:

"The appraiser ascertained the value of the good will by deducting interest at the rate of 6% per annum on the capital employed by the company in its business from the average annual net profits, and multiplying the difference by 10. This gave the value of the good will as \$1,507,922.40. No exception was taken to the amount which the appraiser adopted as the annual average net profits; but it is contended that the value of the good will should be ascertained by multiplying the average net profit by 3 or 5 instead of 10. The cases in this country are not uniform in regard to the number of years' purchase by which the average annual net profits may be multiplied for the purpose of determining the value of the good will. Most of the American cases adopt a period ranging from two to six years, the number being dependent upon the nature of the business, the length of time during which it has been established at a particular place and the extent to which it is known to the public."

The court then held that as Tiffany & Co. had been estab-

lished for more than 60 years, and had an excellent and wide reputation, 10 years' purchase used by the appraiser was not excessive.

In the *Matter of Rosenberg*, 114 Supp. 726, it was held that the business conducted by the decedent in premises rented by the month, owed much of its value to the confidence inspired in customers by the presence of the decedent, and fixed the value of the good will at \$800, or two years' purchase of the net profits, after allowing \$2,000 per year for the decedent's services.

The firm name of a partnership under which it has done business for many years does not belong to the surviving partner, but is a part of the *good will* of the firm, and subject to sale in the same way as other firm property.

*Slater v. Slater*, 175 N. Y. 143; 67 N. E. 224.

General public patronage is an element of the good will.

*Boon v. Moss*, 70 N. Y. 465.

In *Matter of Joseph Pulitzer*, N. Y. Law Journal, December 10, 1912, Surrogate Cohalen in remitting the report of the appraiser said: "Among the items of personal property are the following: Four thousand nine hundred and ninety shares of the Press Publishing Company, par \$100 per share, appraised at \$604.50 per share, \$3,016,455; 9,164 shares of the Pulitzer Publishing Company, par \$100 per share, appraised at \$121.75, \$1,115,717.

"Among the affidavits submitted to the transfer tax appraiser in regard to the value of this stock appears one of Mr. N. H. Hotsford, auditor of the Press Publishing Company, publisher of the *New York World*, dated January 29, 1912, in which he states that the net profits of the Press Publishing Company for the year 1908 were \$333,673; for the year 1909 were \$662,391; for the year 1910 were \$702,374; for the year 1911 were \$552,883; total \$2,251,321.

From this net total the appraiser deducted \$105,000 alleged to have been paid as bonuses to employees of the newspaper. The nature of these bonuses, whether gifts or contractual obligations, is not shown. Assuming these bonuses to have been voluntary contributions to the employees of the newspaper, in my opinion they have been erroneously deducted, and the net profits for the four years should be placed at \$2,251,321 instead of \$2,146,321. This would make the average net profits for the four years preceding decedent's death \$562,830.25 instead of \$536,580, as shown in the report of the transfer tax appraiser."

In *Matter of Ball*, 161 App. Div. 79; 146 Supp. 499, the court said:

"This good will is property, and although intangible, the transfer thereof is taxable under the law relating to taxable transfers. (Tax Law [Consol. Laws, ch. 60; Laws of 1909, ch. 62], §§ 220, 243, as amended by Laws of 1910, ch. 706, and Laws of 1911, ch. 732; *Godley v. Crandall & Godley Co.*, 153 App. Div. 697, 713; 139 Supp. 236; *Matter of Dun*, 40 Misc. Rep. 509; 82 Supp. 802; *Matter of Hellman*, 174 N. Y. 254; 66 N. E. 809; *Matter of Vivanti*, 138 App. Div. 281; 122 Supp. 954; appeal dismissed, 204 N. Y. 413.) The determination of the value of this intangible property is always difficult, and any rule adopted with respect to the same must of necessity be more or less arbitrary. In Allan on the Law of Goodwill (p. 85) the rule is thus stated: 'The usual basis of valuation is the average net profits made during the *few* years preceding the sale.' In *Mellersh v. Keen*, 28 Beav. 453, Sir John Romilly, Master of the Rolls, determined that 'the average of three years' annual profits' was a fair basis of value. In *Page v. Ratcliffe*, 75 L. T. Rep. (N. S.) 371, Mr. Justice Stirling, of the High Court of Justice, said: 'It is assessed at so many years' purchase,' and in fixing the value of the good will of a brewery, he added: 'It seems to me that competition and a desire to

exclude rivals in trade would lead a brewer to give not less than three years' profits.' In *Van Au v. Magenheimer*, 115 App. Div. 84; 100 Supp. 659, this court said, speaking through Mr. Justice Rich, that as a general rule 'the value of good will may be fairly arrived at by multiplying the average net profits by a number of years, such number being suitable and proper, having reference to the nature and character of the particular business under consideration,' and that the proper number of years is not a question of law, but one of fact. In the same case, on a second appeal, 126 App. Div. 257; 110 Supp. 629, it was held not to be error to refuse to charge that in estimating good will by the net profits the number of years cannot exceed five. In *Matter of Keahon*, 60 Misc. Rep. 508; 113 Supp. 926, the value of the good will was determined by multiplying the average net profits for a series of years by three. In *Matter of Silkman*, 121 App. Div. 202; 105 Supp. 872, the average net profits for the three years immediately preceding the testator's death was ascertained, and this sum, multiplied by two, was held, under the circumstances there disclosed, to be a fair basis of computation."

#### d. WHEN THE PROFITS ARE SPECULATIVE.

When the profits for the three years prior to death contain a purely speculative element the speculative profits must be excluded. This was illustrated in *Matter of Brush*, N. Y. Law Journal, Aug. 14, 1915, when the Surrogate said:

"The sum of \$265 a share was fixed as the value of the stock of the National Exhibition Company. The appellant contends that this stock should be valued at a higher figure. The principal items upon which said valuation appears to have been based was the lease of the playing ground used by said company and the earning power of the company. The appraiser, Mr. Day, has sworn that the lease is of no value except as used for its present purpose. I think his



conclusion is correct. While the earning power of the company for the years 1910, 1911 and 1912 shows a large return upon the capital invested, I find that this return is by no means certain by reason of the fact that it is made up largely of money paid by the public to see the post season games called the 'world's championship series.' The New York Base Ball Club, the popular name for the company, cannot, in the very nature of things, be a certain contender in this series every year,—no more than any one of the other seven clubs which, with it, make up the clubs of the national league circuit. Hence the financial returns as a result of being a participant in the world's championship series are so completely speculative that they must be entirely left out of consideration in analyzing the earning power of said company."

But this rule does not apply merely because of the ordinary uncertainties and hazards of commercial enterprises. As the same Surrogate said in *Matter of Daly*, N. Y. Law Journal, July 28, 1916:

"The uncertainties of the theatrical business referred to in the notice of appeal, and which the appraiser, it is alleged, failed to take into account, are, in my opinion, no greater than those of any other business, and the appraiser was justified in disregarding them."

e. WHEN NO PROFITS ARE SHOWN.

An important case on this question went to the Court of Appeals without eliciting an opinion all along the line. The question involved was the valuation and taxation of the good will of the copartnership in which the decedent, Klauber, had an interest.

On the 26th day of April, 1907, Klauber, Horn & Company was dissolved by the retirement of Horn. It had a good will concededly valued at \$300,000.

On the following day the firm of Klauber Brothers & Company was organized. The decedent had substantially a half interest in both firms. The new firm had only been organized six months when Klauber died. It had made no profits simply because in its trade there is a buying season when it is all outgo and a selling season when it is all income, and the first six months were in the buying season. The firm name was not retained; but Klauber Bros. & Co. was *idem sonans*.

The new firm bought and the old firm sold to it:

“The business; The embroidery stock; Goods in the warehouse; Stock in the lace department; Bills receivable; The furniture and fixtures; The lease of the premises where the business was done; All contracts with the traveling salesmen whose services were retained; Books of the old firm; The office supplies; All samples; The designs and cartoons; And the agreement further provided, ‘Only the said David Klauber and Samuel Glauber shall have the right to make these designs, and no direct or indirect copy of such design shall be made by the said Michael Horn, or by any of his agents.’ ”

There was no specific mention of “good will” *eo nomine*.

The Surrogate merely made a memorandum that the new firm did not buy the good will of the old firm and had made no profits itself; so there was no good will. On appeal the Comptroller’s counsel protested that a good will of \$300,000 in value had thus been made to disappear over night. The appellate courts affirmed without opinion.

*Matter of Klauber*, N. Y. L. J., May 17, 1913. Affirmed without opinion, 171 App. Div. 908; 218 N. Y. 607.

Austin Nichols & Co. was incorporated to take over the business of a partnership of the same name. Preferred stock was issued for all assets but good will, which the common stock represented, with the proviso that no divi-

dends should be paid on the common stock unless 7% was paid on the preferred and a sinking fund of \$150,000 set aside from surplus profits. In the year and a half after incorporation these conditions had not been complied with and no dividends were paid on the common stock. Held, that as of the date of death of testator the common stock had no value.

*Matter of Ormiston*, N. Y. L. J., August 14, 1915.

From all of which it might appear that good will is an ephemeral commodity and that partnership agreements may easily be so drawn as to avoid its taxation.

In the *Matter of George A. Hearn*, decided by Surrogate Cohalan of New York county in July, 1917, the good will of the dry goods firm of James A. Hearn & Son was valued at more than twice its tangible assets and five years' purchase was sustained. The valuation of the interest of decedent in the good will after death, under a copartnership agreement, was involved, and is interesting and important. On this the opinion speaks for itself and is given in full as follows:

“Estate of George A. Hearn.—The deceased died on the 1st of December, 1913. The executors of his estate contend that the transfer tax appraiser erred in appraising at \$1,520,014.67 the good will of the business conducted by the decedent and others under the name of James A. Hearn & Son, and they have appealed from the order entered upon the appraiser's report. The firm of James A. Hearn & Son has conducted a drygoods business on West Fourteenth street in this city since 1879. In 1906 new articles of copartnership were entered into between George A. Hearn, the decedent, and three others. They provided that the partnership should continue until March 1, 1916. In the preamble to the partnership agreement it is stated that ‘the good will and assets of James A. Hearn & Son of every kind

and description belong to and are vested in George A. Hearn individually.' The articles of copartnership defined the interest of each of the partners in the firm, but provided that the death of either of the partners would not cause a dissolution of the firm. The articles further provided that in the event of the death of either of the partners, except George A. Hearn, before the expiration of the partnership by time limitation, the interest of the one so dying would be the amount standing opposite his name on the books of the firm at the last preceding trial balance, plus interest at the rate of 5%. Upon the death of George A. Hearn it was provided that his interest or share in the business should continue until the termination of the partnership by time limitation. Upon such termination his executors were authorized and empowered to purchase the interests of the other members of the firm at the amounts standing opposite their names on the books of the firm, as ascertained by the last preceding trial balance. It is apparent from the articles of copartnership that George A. Hearn never parted with the good will of the business of James A. Hearn & Son, and that the other partners never acquired any right to such good will. The value of their respective interests in the business was determined by the partnership agreement, and that instrument excluded the value of the good will when providing for the method of ascertaining the value of their interests. Therefore, George A. Hearn was, at the time of his death, the sole owner of the good will of the business of James A. Hearn & Son. This good will was transferred and disposed of by his will. In appraising the value of the good will the appraiser found that the average annual net profits for the three years immediately preceding the date of decedent's death was \$366,710.18, and he multiplied this amount by  $2\frac{3}{4}$  for the two years and nine months immediately prior to the date of decedent's death, the result being \$1,008,452.98. He also multiplied the average annual net

profits by  $2\frac{1}{4}$  for the time which elapsed between the death of the decedent and the termination of the partnership by time limitation, and took 62% of the result, making \$511,561.69. He then added this amount to the \$1,008,452.89 previously ascertained, and the sum of \$1,520,014.67 he found to be the value of the good will. The appraiser explains that he took 62% of the net earnings after the date of decedent's death, instead of the whole amount, because the decedent's interest in the assets of the firm was 62%. The value of the good will constituted an asset of the decedent's estate, and its value, like that of any other asset, must be ascertained as of the date of his death. The decedent at the date of his death was the owner of the entire good will, and not 62% of it; and it was the value of the entire good will that was transferred by his will. There was therefore no legal justification for the appraiser in calculating the good will on the basis of 62% from the date of decedent's death. The profits earned or losses sustained after the date of decedent's death cannot be taken into consideration in ascertaining the value of the good will (*Matter of Silkman*, 121 App. Div. 203); it must be based upon the net profits for the years preceding the date of decedent's death. The appraiser multiplied the average annual net profits for the three years immediately preceding the date of decedent's death by five. In view of the length of time during which the business has been established, its reputation, its extensive advertising and its prominence in the drygoods trade, I think five years' average of the annual net profits is a reasonable value of the good will of the business (*Von Au v. Magenheimer*, 126 App. Div. 257); but in order to ascertain the average net annual profits which is to be multiplied by five, a period of at least six years immediately prior to the date of decedent's death should be taken into consideration. The average annual profits thus ascertained, multiplied by five, would represent the value of the

good will of the business of James A. Hearn & Son at the date of the decedent's death, if his executors could sell it on that day. The articles of copartnership, however, provided that decedent's interest in the firm could not be sold at the date of decedent's death, but should continue until the termination of the partnership on March 1, 1916. Therefore the value of the good will at the date of decedent's death would be the sum which, if invested at 5% on that day, would equal on March 1, 1916, the amount obtained by multiplying the average annual net profits by five. The appeal of the executors is confined to the value of the good will, no question being raised as to its distribution under the terms of the will of the decedent. It is therefore unnecessary to inquire whether the persons who were partners of the copartnership which expired on March 1, 1916, and who were entitled to receive a certain number of shares of stock in the corporation directed to be formed by the will of the decedent, are beneficiaries of a part of the good will and their interests taxable accordingly. The order fixing tax will be reversed and the appraiser's report remitted to him for correction as indicated."

### C.—DEDUCTIONS.

In order to ascertain the value of the interest transferred which is subject to the tax we must not only consider the assets but also the liabilities, consisting of the debts of the estate and the expenditures, which must be deducted in order to ascertain the net value of the estate passing to the heir, devisee or distributee.

*Jackson v. Myers* (Pa.), 101 A. 341.

Dower, family allowance, homestead, community interest, have all been considered because they are not deductions from the estate of the decedent but never, in fact, became a part of that estate.

## 1. Mortgages.

As to mortgages we have seen that they are to be deducted from the value of the realty on the theory that it is the equity of redemption and not the gross value that is subject to the tax.

*Matter of Sutton*, 3 App. Div. 208; 38 Supp. 277; aff. 149 N. Y. 618.

*Matter of Offerman*, 25 App. Div. 94; 48 Supp. 993.

*Matter of Murphy*, 32 App. Div. 627; 53 Supp. 1110; aff. 157 N. Y. 679.

A direction by testator to pay certain mortgages out of personalty does not authorize the appraiser to deduct the amount from the value of the personal estate.

*Matter of Berry*, 23 Misc. 230; 51 Supp. 1132.

*Matter of DeGraff*, 24 Misc. 147; 53 Supp. 591.

*Matter of Livingston*, 1 App. Div. 368; 37 Supp. 463.

*Matter of Maresi*, 74 App. Div. 76; 77 Supp. 76.

Under chapter 41, New York Laws 1903 (now section 122, Decedents' Estate Law), mortgages are deducted from appraised value of the real estate.

A devisee of land which is subject to a mortgage takes it *cum onere*, and the equity therein is only liable to taxation.

*Matter of Kene*, 8 Misc. 102; 29 Supp. 1078.

In the case of a blanket mortgage covering several pieces of realty, where testator has made an apportionment on sale of one of the parcels, it is binding on the executor and hence on the appraiser.

*Matter of Tremberger*, N. Y. L. J., October 31, 1913.

Where a resident testator devised foreign real estate to his wife, a mortgage on that real estate was held not a deduction from personal property within the State.

*Matter of George W. Vanderbilt*, 104 Misc. 511; 175 Supp. 863.

## 2. Debts.

Debts of the decedent are, of course, to be deducted from his assets in order to ascertain the net value of his estate,

but what of the personal liability of the obliger on a mortgage bond?

a. LIABILITY ON MORTGAGE BOND.

This was recently illustrated in the *Matter of Prentiss*, *N. Y. Law Journal*, Dec. 2, 1916. Here a decedent had deeded the real estate to his wife subject to a mortgage which she did not assume. After holding his liability on the bond a debt of the testator's, the Surrogate said: "But on the other hand the matter of its payment must be viewed as differing from the payment of an ordinary debt, for the reason that in all likelihood it will fall upon the real estate under the terms of the mortgage. In view of this, I think that the proper disposition of the appeal is to suspend giving to said bond the status of a debt until its value is irrevocably fixed by the final disposition of the mortgage."

Under similar circumstances the Surrogate was sustained when he refused to allow the obligation on the bond as a deduction.

*Matter of Calman*, 100 App. Div. 517; 91 Supp. 1095.

See also

*Matter of Skinner*, 45 Misc. 559; 92 Supp. 972; aff. as to this point, 106 App. Div. 217; 94 Supp. 144.

b. REPAIRS TO REAL ESTATE.

The cost of repairs to real estate is a charge on the land and is not to be deducted from the personal assets when the repairs were contracted for during the lifetime of the decedent though not completed until after his death.

*Matter of Baudouine*, 5 App. Div. 622; 39 Supp. 1121.

*Matter of Kemp*, 7 App. Div. 609; 40 Supp. 1144; aff. 151 N. Y. 619; 45 N. E. 1132.

Surrogate Fowler of New York county took an opposite view in *Matter of Amsinck*, *New York Law Journal*, Feb. 21, 1913, but possibly the decision of the Court of Appeals in



the *Kemp* case was not called to his attention. If unpaid bills are deducted from the value of the real estate, then the property should be appraised at its value plus the betterments and minus the sums so unpaid.

### C. DEBTS PAID BY WILL.

When a debt is forgiven by will the transfer is taxable.

*Matter of Bartlett*, 4 Misc. 380; 25 Supp. 990.

*Matter of Wood*, 40 Misc. 155; 81 Supp. 511.

*Matter of Hirsch*, 83 Misc. 681; 145 Supp. 305.

*Matter of Michaelis*, N. Y. L. J., August 11, 1915.

*Matter of Tuigg*, 15 Supp. 548.

If not outlawed, it must be appraised at its fair market value and not its face value.

*Morgan v. Warner*, 45 App. Div. 424; 60 Supp. 963; aff. 162 N. Y. 612; 57 N. E. 1118.

If the debt is valueless, that is, if the beneficiary is financially irresponsible, no tax is imposed, the mental relief of a bankrupt in having one score out of many canceled not being regarded as a taxable commodity.

*Morgan v. Warner*, 45 App. Div. 424; 60 Supp. 963; aff. 162 N. Y. 612; 57 N. E. 1118.

“It is against conscience that the legatee should receive anything out of the fund without deducting therefrom the amount of that fund which is already in his hands, as a debtor to the estate.”

*Smith v. Kearney*, 2 Bart. Ch. 533.

Cited and followed in

*Leask v. Hoagland*, 64 N. Y. 159.

And such debts will not be construed as advancements rather than loans on the testimony of interested parties as against written evidence of the obligation.

*Matter of Dormitzer*, N. Y. L. J., February 6, 1913.

*Matter of Bennington*, 67 Misc. 363; 124 Supp. 829.

*Bruce v. Griscom*, 9 Hun, 280; aff. 70 N. Y. 612.

*Erbeling v. Erbeling*, 61 Misc. 537; 115 Supp. 894.

A more serious question arises when services have been rendered to the decedent and are paid for by will. The payment of the debt by will is taxable. Shall the legatee who accepts the payment still be permitted to prove the value of the services and have them allowed as a deduction? A New York Surrogate has so held, though the decision is of doubtful authority.

*Matter of Enos*, 61 Misc. 594; 115 Supp. 863.

In this case, where a niece had rendered services to testatrix, and the latter, after the usual clause relative to the payment of debts and funeral expenses, devised all her property to said niece; held, that the value of niece's services was a proper deduction.

The contrary was held in Kansas.

*State v. Mollier*, 96 Kan. 514; 152 Pac. 771.

And in New York, where a testatrix left a sum of money to her daughter-in-law pursuant to an agreement thus to compensate her for supporting her husband (the son of the testatrix), and where, after the death of the testatrix, the daughter-in-law presents a claim against her estate based upon the agreement, and the claim, after having been rejected by the executor, is established and paid, the claimant is not entitled also to the legacy under decedent's will intended by her to carry out her agreement.

*Matter of Embury*, 19 App. Div. 214; 45 Supp. 881; aff. 154 N. Y. 746; 49 N. E. 1096.

The creditor must accept the legacy. So where the will directed the executors to pay a debt, but the creditor proves his claim as a debt and the executor pays it as such, it is a proper deduction from the decedent's estate, and the amount thereof is not liable to a transfer tax (citing *Matter of Gould*, 156 N. Y. 423; 51 N. E. 287), and the direction in

the will was a sufficient acknowledgment to remove the bar of the statute of limitations.

*Matter of Levy*, N. Y. L. J., May 15, 1907; aff. 122 App. Div. 919; 107 Supp. 1134.

#### d. DOUBTFUL CLAIMS.

A debt not collectible because the statute of limitations has intervened; or where the statute of frauds may be interposed as a defense, should not be deducted; and, generally, claims should not be allowed as deductions unless they can be proved against the estate and payment enforced if resisted.

*Matter of Wormser*, 36 Misc. 434; 73 Supp. 748.

If the claim against the estate is of doubtful validity the question of deduction should be postponed until the doubt is resolved.

*Matter of Dimon*, 82 App. Div. 107; 81 Supp. 428.

*Matter of Rice*, 56 App. Div. 253; 61 Supp. 911; 68 Supp. 1147.

### 3. Funeral and Burial Expenses.

These are allowed as deductions provided they are "reasonable."

*Matter of Ludlow*, 4 Misc. 594; 25 Supp. 989.

*Matter of Millward*, 6 Misc. 425; 27 Supp. 286.

*Matter of Liss*, 39 Misc. 123; 78 Supp. 969.

The cost of a monument is included.

*State v. Probate Court*, 138 Minn. 307; 164 N. W. 365.

*Matter of Edgerton*, 35 App. Div. 125; 54 Supp. 700; aff. 158 N. Y. 671; 52 N. E. 1124.

*Matter of Black*, 5 Supp. 452.

Also the cost of a cemetery lot.

*Matter of Maverick*, 135 App. Div. 44; 119 Supp. 914; aff. 198 N. Y. 618; 92 N. E. 1084.

*Matter of Vinot*, 7 Supp. 517.

*Re Clare Estate* (Pa.), 103 A. 822.

As to what may be regarded as "reasonable" in such cases there is very little authority. Probably the "station of life" rule as to necessities is applicable.

When the expenditure is provided for in the will the rule seems to be that the testator is the best judge of what he can afford to spend on himself when he dies.

Out of an estate of about \$6,000 testator devised \$2,000 for a tombstone and burial expenses; held, that the fact that the testator designated that amount is a presumption of its reasonableness; and that, as the sum did not pass to any collateral heir, it was not taxable.

*Morrow v. Durant*, 140 Ia. 437; 118 N. W. 781.

#### **4. Administration Expenses and Counsel Fees.**

These are generally allowed as a deduction within the rule of "reasonableness."

*Matter of Westurn*, 152 N. Y. 93-102; 46 N. E. 315.

A counsel fee of \$5,000 where the personal estate amounted to only \$14,270 held unreasonable and disallowed.

*Matter of Thomas J. Kennedy*, N. Y. L. J., August 11, 1915.

Counsel fees and expenses may be estimated in advance by the appraiser.

*Matter of Gould*, 19 App. Div. 352.

"The expenses of administration are imposed as a matter of law and are caused by the use of the legal machinery provided by the State to wind up the affairs of deceased persons, and cannot ordinarily be avoided; hence it is just that they should be deducted from the valuation of the estate."

*State v. Probate Court*, 112 Minn. 279; 128 N. W. 18.

Administration expenses should be paid out of the personal property of a nonresident within the State if it is

sufficient to meet them, and should not be deducted from the value of the real estate. This is important in the States that tax only the tangibles and real property of nonresidents.

*Matter of Steele*, 98 Misc. 180; 162 Supp. 718.

The tax itself is not an expense of administration.

*Chesney's Estate*, 1 Cal. App. 30; 81 Pac. 679.

## 5. Discount on Legacy.

Under most of the statutes a legacy cannot be paid until one year has elapsed — or longer — in order to give time for advertising for debts and collecting assets. It seems to be a necessary moratorium for the settlement and adjustment of the affairs of the decedent. But, as the legacy is presently taxable at its value at testator's death, many attorneys have been inclined to the view that the present worth of the legacy is its true value; in other words, that its taxable value should be its discount value.

The answer to this argument is that the statutes work out practical justice by charging no interest on the tax during the "moratorium;" such at least is the effect of the only decisions on the question to which our attention has been called.

*Matter of Hutter*, N. Y. L. J., December 3, 1914; aff. 167 App. Div. 930; 152 Supp. 1119.

*Matter of Bird*, 11 Supp. 891.

But the courts in several States hold that the postponement of the payment of the legacy operates to postpone the date when the tax falls due.

*Commonwealth v. Gaulbert*, 134 Ky. 157; 119 S. W. 779.

But under this theory the tax must at all events be paid as soon as the legacy.

*Attorney General v. Allen*, 59 N. C. 144.

These authorities overrule the earlier cases in which such a discount was allowed.

*Matter of Peck*, 2 Con. 201; 9 Supp. 465.

*Matter of Underhill*, 2 Con. 262; 20 Supp. 134.

## 6. Expenses of Litigation.

### a. WHEN TO CONSERVE THE ESTATE.

When the purpose of such litigation was to protect and conserve the estate such expenses are allowed as a deduction.

*Matter of Gihon*, 169 N. Y. 443; 62 N. E. 561.

So the expense of preparing for trial to meet objections filed to the probate of the will may be deducted.

*Matter of Reed*, 98 Misc. 102; 162 Supp. 412.

“The successful defense of the attack upon the validity of the will was in the interest of the State, as the recipient of the tax on the bequest to the college; and we think that in ascertaining the amount upon which the tax should be computed the expenditures in defense of the will should have been deducted, so that the tax should not be computed upon it.”

*Connell v. Crosby*, 210 Ill. 380, 391; 71 N. E. 350.

### b. DISPUTES AMONG THE BENEFICIARIES.

On the other hand, litigation caused by disputes among the heirs or distributees as to the value of their interest is not a proper deduction.

*Matter of Thrall*, 157 N. Y. 46; 51 N. E. 411.

*Matter of Sanford*, 66 Misc. 395; 123 Supp. 284.

*Re Lines' Estate*, 155 Pa. St. 378; 26 A. 728.

“The fact that the appellants were put to expense in asserting their rights, and were embroiled in expensive litigation to obtain them, was their misfortune. It did not diminish the value of the interests which devolved upon

them on Westurn's death. It was a loss, but a loss to their general estate. It did not prevent them receiving the whole interest transmitted to them. The fact that the court charged certain costs and allowances in their favor upon the estate did not change the situation. It was practically a charge upon their own property for the benefit of their attorneys."

*Matter of Westurn*, 152 N. Y. 93; 46 N. E. 315.

So, money paid to secure the withdrawal of a will contest is not allowed as a deduction.

*Matter of Marks*, 40 Misc. 507; 82 Supp. 803.

*Matter of Baldwin*, N. Y. L. J., August 21, 1912.

## 7. Taxes.

### a. OTHER INHERITANCE TAXES.

The Federal Government allowed the deduction of State inheritance taxes in ascertaining the net estate, but many of the States did not return the compliment, and September 1, 1917, the Treasury Department reversed its ruling. But the Federal Courts have reversed the department and state taxes are now a deduction. Under the Federal inheritance tax of 1898 the amount due the Government was not allowed as a deduction in New York.

*Matter of Gihon*, 169 N. Y. 443; 62 N. E. 561.

*Matter of Irish*, 28 Misc. 647.

*Matter of Ely*, 149 Supp. 90.

*Matter of Hoyt*, 86 Misc. 696; 149 Supp. 91.

In New York it is held that the present Federal tax is not a deduction.

*Matter of Bierstadt*, 178 App. Div. 836; 166 Supp. 168.

*Matter of Sherman*, 179 App. Div. 497; aff. 222 N. Y. 540.

This is not in accord with the general trend of authority in other States. The Federal tax has thus far been held to be a deduction in Connecticut, Illinois, Minnesota, New

Jersey and Pennsylvania. But Pennsylvania by its statute of 1919 declares the Federal tax not a deduction and Wisconsin follows the New York doctrine, in a case not yet reported. Massachusetts allowed the Federal tax of 1898 as a deduction, and will probably follow the same rule as to the present tax when the question arises.

*Corbin v. Baldwin*, 92 Conn. 99, 101 A. 834.

*Corbin v. Townshend* (Conn.), 103 A. 647.

*People v. Passfield* (Ill.), 220 N. E. 286.

*Smith v. Hennepin County*, 139 Minn. 210; 166 N. W. 125.

*Re Roebeling's Estate* (N. J.), 104 A. 295.

*Knight's Estate* (Pa.), 104 A. 765.

*Hooper v. Shaw*, 176 Mass. 190; 57 N. E. 361.

The questions involved in these litigations also concern the nature of the Federal tax and its constitutionality, and are more fully discussed and digested under that topic. See *post*, p. 556.

In New York the inheritance tax imposed by another State is not allowed as a deduction, and this rule was impliedly affirmed by the Supreme Court of the United States, which dismissed the appeal of the executor.

*Matter of W. H. Penfold*, 216 N. Y. 171; 110 N. E. 499.

This would also seem to be the rule in California; but where the devisee dies and the interest is subject to two inheritance taxes, on two devolutions of the property, the first tax is allowed as a deduction.

*Estate of Williams*, 23 Cal. App. 285; 137 Pac. 1067.

Other States do not accept this doctrine, and it was recently held in Pennsylvania that where a transfer tax had been paid in New Jersey it was a deduction from the value of the estate in Pennsylvania.

*Van Biel's Estate* (Pa.), 101 A. 834.

This rule was also recently followed in Connecticut, where it was held that taxes paid in New Jersey for the



transfer of stock in New Jersey corporations should have been deducted in arriving at the taxable value of the estate in Connecticut.

*Corbin v. Baldwin*, 92 Conn. 99, 101 A. 834.

#### b. GENERAL TAXES AND ASSESSMENTS.

These are allowed as a deduction if they were a debt of the decedent; so, when they are so far complete that the name of the person assessed as the owner cannot be changed or altered by the assessment officers, they are to be deducted.

*Matter of Hoffman*, 42 Misc. 90; 85 Supp. 1082.

*Matter of Babcock*, 115 N. Y. 450; 22 N. E. 263.

If they are assessed during the lifetime of the testator they have the status of debts.

*Matter of Liss*, 39 Misc. 123; 78 Supp. 969.

Taxes levied subsequent to testator's death, but assessed prior to his death, should be deducted if paid by the executors.

*Matter of Brundage*, 31 App. Div. 348; 52 Supp. 362.

Taxes due at death of decedent are payable out of his personal estate, and taxes accruing subsequently are chargeable to the land.

*Seabury v. Bowen*, 3 Bradf. 207.

*Griswold v. Griswold*, 4 Bradf. 216.

*Smith v. Cornell*, 111 N. Y. 554; 19 N. E. 271.

Under the Greater New York charter the assessment roll is not completed until the amount chargeable against each parcel of land is computed and set down, when the lien attaches and it is a debt, and therefore deductible.

*Burr v. Palmer*, 53 App. Div. 358; 65 Supp. 1056.

Accordingly held in the *Matter of Maresi*, 74 App. Div. 76; 77 Supp. 76, that where testator died January 30, 1901,

taxes for the year 1900 are not deductible from his personal estate, as the tax was not a lien at the time of death.

When the assessors had valued the property, but the assessment roll had not been closed or the amount of the tax determined, it was held that the tax was not a debt of the decedent, and so no deduction was allowed.

*Matter of Freund*, 143 App. Div. 335; 128 Supp. 48; aff. 202 N. Y. 556; 95 N. E. 1129.

Taxes levied against the personal property of a non-resident must be paid out of that property, and are not a deduction from the value of the real estate.

*Matter of Steele*, 98 Misc. 180; 162 Supp. 718.

## 8. Commissions.

### a. To EXECUTORS.

Practically all the statutes provide that bequests to executors in lieu of commissions are taxable when in excess of statutory compensation, and all the authorities are agreed that the reasonable or statutory commissions of executors are to be allowed as a deduction.

Where each of three executors received a full commission under the New York Code (§ 2730), three commissions were deducted.

*Matter of Van Pelt*, 63 Misc. 616; 118 Supp. 65.

Where securities of decedent pledged at the time of his death as security for payment of his indebtedness are sold by order of executors, and the proceeds applied to the payment of the debt, the executors are entitled to commissions on the gross proceeds.

*Matter of Williams*, N. Y. L. J., October 2, 1914.

*Matter of Bolles*, 67 Misc. 40; 164 Supp. 620.

Where securities are specifically bequeathed no commissions are allowed on their value.

*Matter of Robinson*, 37 Misc. 336; 75 Supp. 490.

*Matter of Kings County Trust Co.*, 69 Misc. 531; 127 Supp. 879.

But if securities, although not specifically bequeathed, were accepted by the legatees in satisfaction of their legacies, the executors would be entitled to full commissions.

*Matter of Curtiss*, 9 App. Div. 285; 37 Supp. 626; 41 Supp. 1111.

Property held by decedent as trustee should not be included in the assets of the estate and carried as a debt, so as to increase the amount of the deduction for executor's commissions.

*Matter of Russell*, 148 Supp. 272.

If the executors renounce their commissions a nice question arises as to whether there is a gift. If they have accrued the executors may give away what is theirs; if not, the commissions revert to the estate, and are taxable.

*Matter of Van Rensselaer*, N. Y. L. J., October 11, 1912.

The decedent was a resident of New Jersey. The Surrogate said:

“No proof of the law of New Jersey in regard to the particular time at which executors become entitled to commissions was adduced before the appraiser. In the absence of such proof it will be presumed that the law of New Jersey on this question is the same as our law (*Hynes v. McDermot*, 82 N. Y. 41; *Savage v. O'Neill*, 44 N. Y. 298). Our courts hold that an executor is not entitled to commissions until such commissions have been ascertained by the court and a decree entered authorizing their payment (*Wheelwright v. Rhodes*, 28 Hun, 57; *Freedman v. Freedman*, 4 Redf. 211). If, therefore, the executor of the decedent's estate renounced his right to commissions before a decree of the Orphans' Court of New Jersey was made determining the amount of such commissions and directing their payment, he renounced something to which he was not actually entitled and to which he never became entitled. The estate was not diminished by the amount of such com-

missions, because they were never deducted from the estate and had never become the lawful property of any individual. The property passed without any deduction for commissions to the legatee mentioned in decedent's will, and upon the privilege of succeeding to the entire amount of the property so transferred a tax may be imposed.

"If, however, the renunciation was made after the entry of the decree in the Orphans' Court ascertaining such commissions and directing their payment, then, as such commissions would be the property of the executor, his renunciation of them would constitute a gift of the amount of such commissions from him to the legatee, and they would not form a part of the taxable assets of the estate.

b. AS TO TRUSTEES.

Where the executors are also made trustees under the provisions of the will there is a difference of opinion.

In Minnesota it is held that when the executors also become trustees the commissions as such trustees are not a proper deduction. The court reasons thus:

"Trusts, however, of the character of that here before the court, are created for the benefit of those to whom the property ultimately passes, are of voluntary creation, and are intended for the preservation of the estate. No sound reason is given to support the contention that such expenses should be taken into consideration in fixing the value of the estate for the purposes of this tax."

*State v. Probate Court*, 112 Minn. 279; 128 N. W. 18.

A contrary rule prevails in New Jersey.

*Re Christie's Estate* (N. J.), 101 A. 64.

In New York, when the duties as executors are distinct and severable from the duties as trustees, two commissions are allowed; but if not distinct and severable only one commission.

*Matter of Collard*, 161 Supp. 455.

This distinction often involves nice questions in the construction of wills.

In *Matter of Ziegler*, 168 App. Div. 735, 743; 154 Supp. 652; aff. 218 N. Y. 544, the court said:

“They must show that they are required as executors: first, to conserve the entire estate that they may set aside the personal property in one fund for the purposes of an express trust established by the will; and the administration of that trust must be separate and severable in both act and time from the administration of the estate as executors; and finally they must show that they are directed in both of the above particulars, distinctly, definitely and expressly, or by fair intendment, by the will under which they assume to act.”

But the commission may be postponed until the execution of the trust.

“The testator here established a trust fund in the administration of which no executorial duties are to be performed. The executors can pay this fund over to themselves as trustees and be discharged from any liability therefore as executors. They will therefore be entitled to receive commissions for receiving and paying out this sum as executors and for receiving the same as trustees. The trustees will not be entitled to commissions for paying out this money until the termination of the life estate. This commission is not a proper charge in diminution of the value of the life estate.”

*Matter of Vanneck*, 175 App. Div. 363; 161 Supp. 893.

*Matter of Cadwalader*, 96 Misc. 404; 160 Supp. 523.

When the amount of the trust estate cannot be determined until the executorial duties have been performed commissions are allowed.

*Matter of Blun*, 176 App. Div. 189; 160 Supp. 731.

In *Matter of James P. Tuttle*, N. Y. Law Journal, June 9, 1914, Surrogate Cohalen held: “The executors appeal

from the order fixing tax and allege that the appraiser erred in refusing to deduct trustees' commissions from the assets of the estate. The testator directed his executors to pay his debts, to deliver the specific legacies and to satisfy the general legacies. He then directed that his residuary estate be held in trust during the life of his wife. It is obvious that the duties of the executors and trustees are entirely distinct. The trustees therefore are entitled to commissions upon the residuary estate. (*Laytin v. Davidson*, 95 N. Y. 263; *Olcott v. Baldwin*, 190 N. Y. 99; 82 N. E. 748.)''

#### C. ON SALE OF REAL ESTATE.

When there is a mere power of sale of real estate given by the will, and no direction to sell or necessity for sale, no commissions on the real estate are allowed to the executor.

*Matter of Crain*, 98 Misc. 496; 164 Supp. 751.

When the will gave power to sell real estate, but the power has not been exercised at the date of the tax proceedings, commissions on the real estate are not allowed as a deduction.

*Matter of Steele*, 98 Misc. 180; 162 Supp. 718.

Brokers' commissions are also allowed as a deduction when the sale of the real estate is necessary to the due administration of the estate.

*Matter of Saunders*, 77 Misc. 54, 68; 137 Supp. 438; aff. 156 App. Div. 891.

### 9. Family Allowance.

Section 2670 of the New York Surrogates' Act (former § 2713) reads as follows:

"If a person having a family die, leaving a widow or husband, or minor child or children, the following articles

shall not be deemed assets, but must be included and stated in the inventory of the estate as property set off to such widow, husband or minor child or children:

“1. All housekeeping utensils, musical instruments, sewing machine and household furniture used in and about the house and premises, fuel and provisions, and the clothing of the deceased, in all not exceeding in value five hundred dollars.

“2. The family bible, family pictures and school-books used by or in such family, and books not exceeding in value fifty dollars, which were kept and used as part of the family library.

“3. Domestic animals with their necessary food for sixty days, not exceeding in value one hundred and fifty dollars.

“4. Money or other personal property not exceeding in value one hundred and fifty dollars.

“Such property so set apart shall be the property of the surviving husband or wife, or of the minor child or children if there be no surviving husband or wife. No allowance shall be made in money or other property under subdivisions one, two and three if the articles mentioned therein do not exist.”

Former § 2713 amended and renumbered, L. 1914, chap. 443.

Most of the States have similar statutes.

The above exemptions are allowed as deductions in transfer tax proceedings.

*Matter of Libolt*, 102 App. Div. 29; 92 Supp. 175.

But the allowance is in kind only; the money value cannot be estimated and deducted.

*Matter of Baird*, 126 App. Div. 439; 110 Supp. 708.

*Matter of Stiles*, 64 Misc. 658; 120 Supp. 714.

*Matter of Williams*, 31 App. Div. 617; 52 Supp. 710.

*Matter of Keough*, 42 Misc. 387; 86 Supp. 807.

*Baucus v. Stover*, 24 Hun, 109.

## 10. Pro Rating Debts.

More serious problems arise in taxing the transfer of property of nonresidents within the State. The estate might be bankrupt and yet there might be no local creditors and all the assets might be within the State. The general rule is to apportion or pro rata the assets and total debts;

*Matter of Baylies*, 148 Supp. 912.

as well as the funeral expenses, commissions and other deductions.

*Matter of Porter*, 67 Misc. 19; 124 Supp. 676; aff. 148 App. Div. 896.

The commissions of a foreign executor are estimated at the rate paid in New York unless there is proof of a different allowance in the State of domicile.

*Matter of Kennedy*, 20 Misc. 531; 46 Supp. 906.

*Matter of La Farge*, 149 Supp. 535.

“Under the decision in the *Matter of Porter*, 67 Misc. 19; 124 Supp. 676; aff. 148 App. Div. 896, the appraiser should have deducted from the New York assets the debts due to residents of this State and then deducted the foreign debts and administration expenses in the proportion which the New York assets bore to the entire assets of the estate.”

*Matter of Yerkes*, N. Y. L. J., December 5, 1912.

### a. WHEN THE LOCAL DEBTS EXCEED THE LOCAL ASSETS.

In *Matter of King*, 71 App. Div. 581; 76 Supp. 220; aff. 172 N. Y. 616; 64 N. E. 1122, the nonresident decedent's interest was in a firm which manufactured in New York and had a branch selling office in Illinois, hence its assets were mainly in Illinois, and its debts in New York and the New York debts exceeded the local assets.

The court said:

“However desirous we may be to give a liberal construction in order to uphold a levy under the Transfer Tax Act



(Laws of 1896, ch. 908, art. 10, as amd.), we think there is an insuperable objection to sustaining the tax fixed in this proceeding. Ordinarily on the death of a member of a firm the legal title to the assets of the firm vests in the surviving members, and what is left to the representatives of the deceased partner is the right to an accounting. (*Williams v. Whedon*, 109 N. Y. 333; 16 N. E. 365.) Assuming, however, but not deciding, that the decedent had a property interest in the assets of the firm in this State which is subject to taxation, we find it impossible to get away from the conclusion that as against such property the right exists to deduct the debts due to creditors in this State. In the present instance, upon the conceded facts, this would leave no balance subject to taxation. A tax on personal property of a nonresident is one which the State imposes based upon its dominion over the property situated within its territory, and as such property is liable to be appropriated for the payment of debts therein, we fail to see upon what principle the latter can be entirely disregarded. Here it is conceded that the liabilities of the firm in this State exhaust its assets in this State.”

b. WHEN THERE ARE LOCAL ASSETS AND NO LOCAL DEBTS.

When the assets were in California and the debts in New York, the California court said:

“In determining the value fixing the amount of the inheritance tax payable in this State of property having its situs therein which passes in kind to the residuary legatees under the will of a nonresident testator, who left no creditors in this State and whose estate in his State of domicile is ample to pay all debts and expenses of administration, no deduction should be made from the actual value of the property of any portion of the debts proved or expenses incurred in the State of the testator’s domicile.”

*McDougal v. Low*, 164 Cal. 107; 127 Pac. 1027.

C. WHEN LOCAL DEBTS ARE PAID WITH FOREIGN ASSETS.

In Tennessee it is held that to secure a deduction of debts of a nonresident due local creditors it must be shown that they were paid from local assets. So, when a resident of Mississippi owned property in Tennessee, and owed debts there, and the debts were paid out of Mississippi assets, no deduction was allowed.

*Memphis Trust Co. v. Speed*, 114 Tenn. 677, 691; 88 S. W. 321.

In New York, however, a deduction is allowed, notwithstanding the fact that the local debts were paid with foreign assets. The court reasons thus:

“The principle applicable to this taxation is different from that applicable to the taxation of personal property of residents of this State, for here the tax is not against the individual or against the particular property, but is a tax upon the transfer of that property, and it is only by reason of the transfer of the specific personal property in this State from the testator to his legatees that the State undertakes to tax, and when nothing actually passes by virtue of that transfer no tax is imposed. The Code having made this property within the State applicable to the payment of the debts of the decedent to resident creditors, the fact that to release them the executor brought money of the decedent from out of the State and paid the debts, so that the securities in this State could be transmitted to be administered at the residence of the decedent, cannot make any difference as to what actually was transferred upon which a tax was imposed.

“If the securities had been sold and the proceeds used to pay the debts to resident creditors there could be no question. The executors have procured the money, paid the debts, and released these securities from the liability for his indebtedness, in substance purchased the securities for the estate. This result is within *Matter of King*, 71

App. Div. 581; 76 Supp. 220; aff. on opinion below, 172 N. Y. 616; 64 N. E. 1122; and *Matter of Westurn*, 152 Id. 93; 46 N. E. 315. There it was held that what was transferred and what was, therefore, taxable was the amount of the property of the testator less his debts.”

*Matter of Grosvenor*, 124 App. Div. 331; 108 Supp. 926; 126 App. Div. 953; 111 Supp. 1121; aff. 193 N. Y. 652; 86 N. E. 1124.

d. WHEN THERE ARE BOTH LOCAL AND FOREIGN DEBTS AND ASSETS.

“The deduction to be made for debts owing to nonresident creditors, mortuary expenses, commissions on property without the State, and other administration expenses in respect to such property, should be in the proportion which the net New York estate (after all deductions are made for debts owing to resident creditors, New York commissions, and New York administration expenses) bears to the entire gross estate wherever situated.”

*Matter of Porter*, 67 Misc. 19; 124 Supp. 676; aff. 148 App. Div. 896; 132 Supp. 1143.

*Matter of Browne*, 127 App. Div. 941; 111 Supp. 1111; aff. 195 N. Y. 522; 88 N. E. 1115.

So, where the appraiser merely deducted from the New York assets the expenses of administration and commissions allowed by the laws of New York, it was held that he should also have deducted the proportion of the debts due to nonresidents and the administration expenses incurred in the State of decedent's domicile which the net New York assets bear to the entire assets of the estate wherever situated.

*Matter of Kirtland*, 94 Misc. 58; 157 Supp. 378.

When a deceased nonresident's total estate was \$489,393.27, and his tangible assets in New York were valued at \$50,040.30, and he owed the Vichy Company, a French

corporation, \$129,617.24 on a contract payable in New York, the executors contended no tax was due; but the Surrogate held the debts should be pro-rated against the entire assets. That is, as about 1-11 of the assets were taxable in New York they should be charged with about 1-11 of the debt.

*Matter of Raimbouville*, N. Y. L. J., July 27, 1916.

e. AS TO PARTNERSHIPS.

When partnership debts are paid out of partnership assets no deduction allowed from individual estate.

*Memphis Trust Co. v. Speed*, 114 Tenn. 677; 88 S. W. 321.

The whole subject was exhaustively considered by the New York County Surrogate in the *Matter of Clark*, N. Y. Law Journal, Feb. 9, 1912. The decedent's firm had its main office in Boston, with branch offices in New York and Chicago. The deceased was owner of 7/10 of the firm assets. The New York assets amounted to \$94,306.88, there were New York debts of \$26,174.65, and then there was a special partner, residing in New York, who had \$100,000 invested in the firm. In dealing with the problem thus presented the court said:

"It is true that the legal title to the partnership property in this State vested upon the death of the decedent in the surviving partners for the purpose of liquidation and that the right of the legal representatives of the deceased partner in the assets was an equitable right to the decedent's share of what was left after payment of the partnership debts. (*Reinhardt v. Reinhardt*, 134 App. Div. 440; 119 Supp. 285; *Joseph v. Herzog*, 198 N. Y. 456; 92 N. E. 103); but it is alleged in the affidavit submitted by the executors that the net value of the partnership assets in this State was the sum of \$94,306.88, and that the legal representatives of the decedent were entitled to seven-tenths of this amount, subject to any claims of partnership creditors in other

States which remained unsatisfied after the application of the partnership property in those States to the payment of the partnership indebtedness. When the value of this interest was actually ascertained and definitely determined its transfer became taxable in the same manner and to the same extent as if the property had belonged to the decedent individually at the time of his death. (*Matter of Clinch*, 180 N. Y. 300; 73 N. E. 35.) For the purpose of ascertaining the value of this interest debts due by the partnership to New York creditors must first be deducted from the firm assets located here. (*Matter of King*, 71 App. Div. 581; 76 Supp. 220; aff. 172 N. Y. 616; 64 N. E. 1122.) There does not, however, seem to be any authority for holding that the general indebtedness of a partnership to creditors in different States should all be deducted from the New York assets; it would seem to be more equitable and reasonable to deduct from the net assets in New York that proportion of the general indebtedness of the partnership to foreign creditors which the New York assets bear to the entire assets of the partnership. (*Matter of Porter*, 67 Misc. 19; 124 Supp. 676; aff. 148 App. Div. 896; 132 Supp. 1143.)

“The executors also contend that the contribution of the special partner constitutes an indebtedness of the firm to a New York creditor, and that the amount should be deducted in full from the New York assets. A special partner in a limited partnership is not entitled to payment of his contribution until the claims of all the partnership creditors are satisfied (§ 37, Partnership Law), and if payment is made to him after dissolution of the firm, but before all the creditors are paid, the amount so paid to him may be reached by a creditor of the partnership who has exhausted his remedies against the partnership assets. (*Fuhrmann v. Von Pustau*, 126 App. Div. 629; 111 Supp. 34.) The interest of a special partner is not strictly a debt at all. (*Harris v. Murray*, 28 N. Y. 547; *Hayes v. Meyer*, 35 N. Y.

226.) Up to the time of dissolution a special partner is not a creditor of the firm in any sense. (*Matter of Price-McCormick Co.*, 69 App. Div. 37; 74 Supp. 624.) It would therefore appear that the special partner is not a New York creditor within the meaning of the decision in the *Matter of King, supra*, directing that debts due to New York creditors should be deducted in full from New York assets for the purpose of ascertaining the value of decedent's interest in the copartnership."

### 11. Marshaling Assets to Reduce Tax.

#### a. WHEN THE EXECUTORS CAN DO SO.

It was for a long time held in New York that a foreign executor might so marshal the assets of the estate that legacies to collaterals and strangers would be paid out of foreign assets and so escape the higher rate of tax, leaving the New York assets to pass to lineals and exempt corporations.

In *Matter of James*, 144 N. Y. 6; 38 N. E. 961, the court said:

"The property, which the testator died possessed of in Great Britain, is largely in excess of the amount given by him in legacies. Some portion of them has already been paid from the English estate, and the executor has declared his determination of appropriating that part of the testator's property to their payment; so that the American estate shall constitute the residuary estate, disposed of by the will in favor of the testator's brothers. This he may rightly do and thus save the estate from the payment of the succession tax imposed by our laws."

To the same effect is:

*Matter of McEwan*, 51 Misc. 455; 101 Supp. 733.

This has been followed in recent years in Tennessee and Illinois.

The Tennessee statute exempts a widow. The widow of a nonresident owning personal property within Tennessee elected to take that property as her half, and the court held she could do so, citing *Matter of James*, 144 N. Y. 6; 38 N. E. 961.

*Memphis Trust Co. v. Speed*, 114 Tenn. 677; 88 S. W. 321.

So, it is held in Illinois that an Illinois executor cannot be compelled from the residuary estate, or from his personal funds, to pay inheritance taxes assessed by the County Court on bequests made to nonresident beneficiaries whose bequests have been paid by an ancillary executor out of proceeds of sales made by him under the will and approved by a court of a foreign State, of real estate in such State. The court said:

“It was the proper exercise of a sound discretion by those representing the benevolent, charitable and other similar institutions in Ohio to elect to take their legacies from proceeds of real estate in that State and so give the institutions they severally represented the benefit of the laws of that State exempting such legacies from the succession tax according to the laws of that State. It would be inequitable to require payment of the tax by the executor from his personal funds or from the residuary estate in view of our conclusion that the action of the Ohio beneficiaries of Barber’s will was lawfully taken and relieved the funds bequeathed to them from the operation of the inheritance tax of the laws of Illinois.”

*People v. Kellogg*, 268 Ill. 489, 501; 109 N. E. 304.

#### b. WHEN HE CANNOT.

In New York the rule no longer obtains. It was first modified in *Matter of Ramsdill*, 190 N. Y. 492; 83 N. E. 584, where a distinction was made in cases of intestacy. The court said:

“When a specific foreign legatee of a foreign testator can obtain satisfaction of his legacy in a foreign jurisdiction, the executor cannot be compelled to pay such a legacy out of the assets within our jurisdiction. This is the necessary result of the practical and obvious distinction between testacy and intestacy as applied to this subject of taxation. If a specific legatee needs not the intervention of our laws or courts to obtain what comes to him under a foreign will through foreign assets, in a foreign jurisdiction, our laws cannot coerce an executor into paying his legacy out of funds within our jurisdiction for the sole purpose of exacting a tax.

“But in a case of intestacy the rule is essentially different, because the distributee takes an undivided interest in the whole estate; and if part of it happens to be within our jurisdiction, he can only get his share of what is here under our laws and through our courts. This is the theory upon which the nephews and nieces of the intestate in the case at bar are clearly taxable under our statute.”

By chapter 310, L. 1908 (subd. 3, § 220, of the present act), it was provided that all taxable nonresident property within the State not specifically bequeathed is deemed to be transferred proportionately; and foreign executors are no longer permitted to marshal the assets so as to defeat or lessen the tax.

The same result has been attained in Massachusetts through judicial construction. The court thus reasons:

“The remaining question is whether the executors, by using the stock in Massachusetts corporations for the payment of debts and legacies, to the exemption of the property in New Hampshire, could relieve it from liability to a tax upon succession imposed by our law. We are of opinion that they could not. It was decided in *Hooper v. Bradford*, 178 Mass. 95; 59 N. E. 678, that taxes under this statute are to be assessed on the value of the testator’s



property at the time of his death. The rights of all parties, including the rights of the Commonwealth to its tax, vest at the death of the testator. It is true that the interest of a legatee is subject to an accounting; but it is an interest in the existing fund, and it is analogous to that of a *cestui que trust*. The executors cannot, by independent action in attempting to marshal assets according to their personal wishes, enlarge or diminish the rights of legatees, or of the Commonwealth. The property in Massachusetts is subject to the jurisdiction of our courts, and the executors must use and appropriate it according to law. (*Greves v. Shaw*, 173 Mass. 205; 53 N. E. 372, 309; *Callahan v. Woodbridge*, 171 Mass. 595; 51 N. E. 176.) The debts, the legacies in Massachusetts exempt from taxation and the expenses of administration are chargeable upon the general assets, as well those in New Hampshire as those in Massachusetts, and only a proportional part of the property in Massachusetts should be used in paying them. The balance is subject to the payment of a tax under the statute. The decision of the probate court upon this part of the case was correct."

*Kingsbury v. Chapin*, 196 Mass. 533; 82 N. E. 700.

## PART V—PROCEDURE

---

	PAGE
<b>A. Preliminaries. . . . .</b>	404
1. Motions to Exempt. . . . .	404
2. In Case of Nonresidents. . . . .	409
3. The Safe Deposit Box. . . . .	412
a. Comptroller May Inspect. . . . .	412
b. May Not Impose Arbitrary Conditions. . . . .	414
c. Consent for Transfer of Funds. . . . .	414
a. Property Belonging to Another. . . . .	415
4. Inventory. . . . .	416
a. Must be Filed by Executor. . . . .	416
b. Form of Affidavit. . . . .	417
c. Preparation of Inventory. . . . .	423
d. Form of Inventory. . . . .	431
<b>B. Proceedings Before Appraiser. . . . .</b>	439
1. Appraisers. . . . .	440
a. Appointment and Removal. . . . .	440
b. Powers and Duties. . . . .	441
2. Notice. . . . .	444
a. Notice is Jurisdictional. . . . .	444
b. Notice by Mail Sufficient. . . . .	447
c. Where Notice is Impossible. . . . .	448
d. Presumption of Notice. . . . .	448
3. Hearings. . . . .	449
a. Informal Upon Affidavits. . . . .	449
b. Burden of Proof. . . . .	450
c. Witnesses. . . . .	451
d. Personal Transactions with Deceased. . . . .	453
e. Corporate Books. . . . .	454
f. Objections. . . . .	455
g. Proof of Foreign Law. . . . .	457
4. Report. . . . .	457
a. What It Should Contain. . . . .	457
b. What It Must Show. . . . .	459
c. Where Taxation is Suspended. . . . .	459
d. Form of Report. . . . .	461
<b>C. Proceedings on Appeal . . . . .</b>	466
1. Jurisdiction of Probate Court. . . . .	466
a. Effect of Probate Decree. . . . .	466
b. Decree of Distribution. . . . .	469
c. Jurisdiction of the Tax Proceedings. . . . .	470
2. Assessment of the Tax. . . . .	471

	PAGE
a. The Judge Acts as Taxing Officer.....	471
b. The Taxing Order .....	473
c. Report May be Remitted to Appraiser.....	474
d. Forms of Taxing Order.....	475
(1) Where There are no Contingent Remainders.....	475
(2) Present Taxation of Contingent Remainders.....	476
e. Effect of Decree Assessing Tax.....	481
3. Appeal to the Surrogate.....	483
a. Notice of Appeal .....	485
b. Form of Notice .....	485
4. Determination by Surrogate .....	488
a. Hearings on Appeal .....	490
b. On Motions to Exempt.....	491
c. Order Remitting Report .....	493
d. Supplemental Report of Appraiser .....	493
e. Second Taxing Order .....	495
f. Notice of Appeal from Second Taxing Order.....	496
g. Taxing Order Upon Second Appeal.....	498
h. Notice of Appeal to Appellate Division.....	499
5. Before the Appellate Courts.....	500
a. Who May Appeal.....	501
b. Order Appealed From .....	503
c. Service of Notice of Appeal.....	505
d. Papers on Appeal .....	505
e. Costs . . . . .	506
f. Appeals to Court of Appeals.....	507
g. To Supreme Court of United States.....	508
D. Subsequent Proceedings .....	508
1. Motions to Modify Decree.....	508
a. Where There Was a Mistake of Fact.....	509
b. Where There Was Lack of Jurisdiction.....	511
c. May Not Correct an Error of Law .....	512
d. Laches . . . . .	514
e. Bad Faith .....	515
f. Statute of Limitations .....	517
2. Motions to Remit Penalty .....	518
3. Mandamus .....	521
a. When Writ Allowed.....	521
b. When Refused . . . . .	523
4. Proceedings to Collect Delinquent Taxes.....	524
5. Personal Liability of Executor or Administrator.....	525
6. Personal Liability of Beneficiaries.....	527
7. Compromise Agreements .....	528
8. Application of Tax Money.....	528
9. Interest .....	529

## PART V — PROCEDURE

---

### A.— PRELIMINARIES.

“It is not enough for the Legislature to declare that such interests are taxable. If no mode is provided for assessing and collecting the tax the law is imperfect and cannot, as to such interests, be executed. A tax cannot be legally imposed unless the statute, in addition to creating the tax, provided an officer or tribunal who shall appraise and assess the property on notice to the owner. (*Stuart v. Palmer*, 74 N. Y. 188; *Remsen v. Wheeler*, 105 N. Y. 575.) The principle decided in the cases cited applies to the transfer tax as well as to the assessments for public improvements. (*Matter of McPherson*, 104 N. Y. 321.)”

*Matter of Stewart*, 131 N. Y. 274; 30 N. E. 184.

So, when a nonresident decedent owned both real and personal property, the Surrogate had jurisdiction under the New York Act of 1887; but unless he owned real estate no machinery was provided for collecting tax; and hence his estate escaped taxation. This was remedied by amendment; but even such a distinction, if intentional, was held constitutional.

*Beers v. Glynn*, 211 U. S. 477.

*Matter of Lord*, 111 App. Div. 152; 97 Supp. 553; aff. 186 N. Y. 459; 79 N. E. 1110.

*Matter of Embury*, 19 App. Div. 214; 45 Supp. 881; aff. 154 N. Y. 746; 49 N. E. 1096.

#### 1. Motions to Exempt.

When the estate is too small to be taxed there are provisions in nearly all the statutes for a motion, upon affidavit setting forth the facts, for an exemption; or, if the tax only

amounts to a few dollars, for a motion to fix the tax without the formality of inventory or appraisal. The county treasurer or local comptroller's representative will always have blank forms for such applications. Notice of such an application must be given to the comptroller or tax commission.

*Matter of Collins*, 104 App. Div. 184; 93 Supp. 342.

A motion to exempt is not entertained where the taxing plished by a motion to modify the decree.

order has already been entered; it must then be accom-

*Matter of Rothfeld*, N. Y. L. J., January 4, 1914.

Following is the form of a motion used before the Surrogate of New York county:

SURROGATE'S COURT — NEW YORK COUNTY.

*In the Matter of the Estate of* .....  
 ..... *Deceased.*

PLEASE TAKE NOTICE, that on the petition of .....  
 ....., dated and verified the ..... day of  
 ....., and the affidavit of .....  
 ....., verified the ..... day of ....., and  
 on all other papers and proceedings herein, I will move  
 this Court at Chambers thereof to be held in the Hall of  
 Records, in the Borough of Manhattan, City of New York,  
 County of New York, on the ..... day of .....  
 at 10:30 o'clock in the forenoon of that day, or as soon  
 thereafter as counsel can be heard, for an order exempting  
 the estate of ....., deceased,  
 from the tax imposed by the article of the Tax Law  
 relating to the Taxable Transfers of Property.

Dated New York, .....

TO LAFAYETTE B. GLEASON,  
*Attorney for the State Comptroller,*  
 233 Broadway, Borough of Manhattan,  
 City of New York.

SURROGATE'S COURT — COUNTY OF NEW YORK.

*In the Matter of the Estate of* .....  
 ..... *Deceased.*

TO THE SURROGATE'S COURT OF THE COUNTY OF NEW YORK.

The petition of ..... respectfully  
 shows:

FIRST.— That he is one of the Executors of the last will and testament of ....., deceased; that said decedent died a resident of the State of New York on the ..... day of ....., leaving a last will and testament, copy of which is hereby annexed, which was duly admitted to probate by the Surrogates' Court of the County of New York, on the ..... day of ....., and that Letters Testamentary were duly issued by the said Surrogates' Court of the County of New York, on the ..... day of ..... to your petitioner, ..... whose post office address is ....., Borough of Manhattan, City of New York, and to ....., whose post office address is .....

SECOND.— That no order has been made herein appointing an appraiser.

THIRD.— That as such Executor, deponent is personally familiar with the affairs of said estate, the property constituting the assets thereof and their fair market value and with the debts, expenses and charges properly and legally liable as deductions therefrom; that decedent at the time of his death had no safe deposit box; that to the best of deponent's knowledge, information and belief, there is no

person better informed than deponent upon the said affairs of this estate.

FOURTH.— That Schedule A, hereunto annexed, sets forth fully and in detail all the personal property wheresoever situated, owned by the decedent, or in which said decedent had any right, title or interest at the time of his death, or which, by reason thereof, fell into or became part of the assets of this estate by reversion, remainder or otherwise. That decedent owned no real estate at the time of his death, and decedent made no gift, grant or conveyance in contemplation of death, or to take effect at or after death, and decedent had no power of appointment vested in him by the will or deed or other instrument of another.

That decedent left no money at the time of his death, either in his immediate possession, standing to his credit, or in which he had any right, title or interest, in banks of deposit, savings banks, trust companies, or other institutions, except as set forth in said Schedule A. That decedent left no wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automobiles, boats, or any other personal chattels of any kind or nature, no bonds or mortgages or claims due and owing decedent at the time of his death, and no promisory notes or other instruments in writing for the payment of money, except as stated in said Schedule A.

That decedent was in the employ of .....  
and was not interested in any copartnership or business.

That decedent carried no life insurance policy or policies payable to himself or his estate, but was insured in the ..... for the sum of ....., and also insured in the ..... for the sum of ..... and that both policies were payable to .....  
....., your petitioner, as beneficiary.

That decedent owned no corporate stocks or bonds, or other investment securities, and no property of any kind or description except as set forth in said Schedule A.

FIFTH.—That Schedule B hereto annexed sets forth the funeral expenses, administration expenses and counsel fees paid or incurred in connection with the estate. That decedent left no debts or claims against the decedent. The Executors also claim to be allowed as a deduction herein their lawful commissions as Executors.

SIXTH.—That the only person beneficially interested in this estate at the time of decedent's death was and is your petitioner, ..... a  
 ..... of decedent, who resides at .....  
 and that <sup>she</sup><sub>he</sub> is of full age and sound mind.

SEVENTH.—That decedent left no property held by the decedent in trust for or jointly with another or others.

EIGHTH.—That petitioner has made due and diligent search for property of every kind and description left by the decedent, and has been able to discover only that set forth in Schedule A, and that no information of other property of the decedent has come to <sup>her</sup><sub>his</sub> knowledge, and that <sup>she</sup><sub>he</sub> verily believes that the decedent left no property except as therein set forth.

That all the sums claimed as deductions in Schedule B are lawful, just and fair.

WHEREFORE, your petitioner prays that an order be made exempting the estate of .....  
 from the tax imposed by the article of the Tax Law relating to Taxable Transfer of Property.

Dated, .....

.....

*Petitioner.*



## 2. In Case of Nonresidents.

If there are assets situated in another State, or the deceased owned stock in a corporation incorporated in another State, the attorney for the executor or administrator should write to the proper official in that State for blank forms and information.

Where a waiver is desired from the State Comptroller for the transfer of assets of a nonresident within the State of New York the following form of affidavit is now used in New York County under the recent act of May 14, 1919, in regard to the taxation of nonresident transfers:

### SURROGATE'S COURT — NEW YORK COUNTY.

IN THE MATTER OF  
The Transfer Tax Upon the Estate  
of  
.....  
Deceased.

Affidavit for  
Appraisal.

STATE OF ..... }  
County of ..... } ss.:

....., being duly sworn, deposes and says:

I. That he resides at .....

II. That said decedent died on the ..... day of ....., 191.., a resident of ....., State of ....., testate, and letters of administration (or letters testamentary) were issued on the ..... day of ....., 191.., by the ..... Court of the County of ....., State of ..... The facts showing the decedent to be a resident of such State are as follows:

(Note \* p. 412.)

III. That deponent was appointed administrator of this estate. executor

IV. That the decedent died seized and possessed of no real estate in the State of New York, and no goods, wares or merchandise physically in the State of New York.

V. That decedent died seized and possessed of no stock of corporations organized under the laws of the State of New York, or stock of national banking associations located in the State of New York, except as stated in Schedule A.

VI. That decedent died seized and possessed of no property, except as stated in Schedule A, evidenced by or consisting of shares of stock of a foreign corporation, joint stock company or association, or bonds, notes, mortgages or other evidences of interest in any corporation, joint stock company or association, other than a monied corporation, a railroad or transportation corporation, public service corporation, or manufacturing corporation, the property represented by such shares of stock, bonds, notes, mortgages, or other evidences of interest consisting of real property wholly or partly within the State of New York.

VII. That decedent died seized and possessed of no interest in any partnership business conducted wholly, or partly, within the State of New York, and was not possessed of any money or capital invested in business in the State of New York, either as principal or partner, except as stated in Schedule A.

VIII. That decedent made no transfer by deed, grant, bargain, sale or gift in contemplation of death, or intended to take effect in possession or enjoyment at or after his death of real property, or goods, wares and merchandise within the State of New York; or of shares of stock of corporations organized under the laws of the State of New York, or of national banking associations located in the State of New York; or of property evidenced by or con-

sisting of shares of stock of a foreign corporation, joint stock company or association, or bonds, notes, mortgages, or other evidences of interest in a corporation, joint stock company or association, other than a monied corporation, a railroad or transportation corporation, a public service corporation or manufacturing corporation, the property represented by such shares of stock, bonds, notes, mortgages or other evidences of interest consisting of real property wholly, or partly, within the State of New York; or of any interest in a partnership business conducted within the State of New York, except as stated in Schedule A.

IX. That at the time of decedent's death there was no property held in the joint names of said decedent and any other person, or by decedent and another as tenants by the entirety, or in the joint names of decedent and another payable to either or the survivor, except as stated in Schedule A.

X. That the following are the names, relationship and amount of interest of the persons among whom this estate is distributable, etc., etc.:

Name of Relationship	Address	Age of Life Tenant	Amount of Interest
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

That this affidavit is made for the purpose of securing the waivers of the Comptroller of the State of New York to transfer the following property owned by this decedent at the date of his death or in which the decedent had an interest.

That decedent had no power of appointment under any will, deed or other instrument, *except as hereinafter set forth.*

[*Attach County Clerk's Certificate.*]

.....

Sworn to before me this ..... }  
           day of ....., 191..        }

.....

*Notary Public,*  
           ..... *County.*

NOTE.— If decedent died testate a copy of will should be attached to this affidavit.

\* State whether such person dwelt or lodged in New York State during and for the greater part of any period of twelve consecutive months in the twenty-four months next preceding his or her death.

\*\* Present address of all the beneficiaries must be stated.

### 3. The Safe Deposit Box.

#### a. COMPTROLLER MAY INSPECT.

• • The statutes of all the States where there are large cities require notice to the Comptroller or Tax Commission by the executor or administrator before the securities of a decedent deposited with a safe deposit company can be delivered or a bank account transferred.

Safe deposit companies were inclined to contest the right of the State to step in between them and their customers and the test case in New York resulted in their favor.

*People v. Mercantile Safe Deposit Co.*, 159 App. Div. 98; 143 Supp. 849.

In this case it was held that a safe deposit company, in renting boxes to its customers, is a landlord having no custody or control of the contents or physical possession thereof; and it, therefore, was not liable for a penalty in failing to disclose the contents of such a box belonging to a deceased customer to an agent of the Comptroller.

This case was not taken to the Court of Appeals because a case in Illinois, where the same question was tested, went

to the Supreme Court of the United States, where an opposite result to the ruling in the New York case was reached.

*National Safe Deposit Co. v. Stead*, 250 Ill. 584; 95 N. E. 973; aff. 232 U. S. 58.

The United States Supreme Court reasoned thus:

“The contention that the company could not be arbitrarily charged with the duty of supervising the delivery and determining to whom the securities belonged is answered by the fact that in law and by contract it had such control as to make it liable for allowing unauthorized persons to take possession. Both by the nature of its business and the terms of its contract it had assumed the obligation cast upon those having possession of property claimed by different persons.

“Nor was there any deprivation of property nor arbitrary imposition of a liability in requiring the company to retain assets sufficient to pay the tax that might be due to the State. There are many instances in which, by statute, the amount of the tax due by one is to be reported and paid by another,—as in the case of banks required to pay the tax on the shares of a stockholder. \* \* \* The boxes were leased with the knowledge that the State had so legislated as not only to protect the interests of one dying after the rental, but also to secure the payment of the State tax out of whatever might be found in the box belonging to the deceased.”

Since this decision safe deposit companies throughout the Union have acquiesced with the demands of the State for a right to inspect the contents of the safe deposit boxes of decedents.

In a recent case in New York, where a surviving joint tenant demanded access and the State Comptroller ordered the box sealed and the personal representative of the deceased joint tenant were also opposed, the surviving

joint tenant procured a mandatory injunction, but it was reversed leaving the applicant to his remedy at law.

*Moller v. Lincoln S. D. Co.*, 174 App. Div. 458.

**b. MAY NOT IMPOSE ARBITRARY CONDITIONS.**

But the State Comptroller cannot impose arbitrary conditions or burden the estate with any expense.

“Upon receiving notice, it is the duty of the Comptroller to have his representative attend and make a memo of the assets; and if the Comptroller so desires he may have an appraisement, at his own expense, provided he does not delay the administrator in the performance of his statutory duties in acquiring control of the property and assets. He may not burden the estate with the expense of an appraisal and withhold his consent to delivery until this command has been complied with. The consent is not a matter of favor but a right which the administrator is entitled to, and it may not be arbitrarily refused. An executor upon application to the Surrogate is entitled to relief from such refusal.”

*Matter of Rook*, 98 Misc. 544.

In the matter of nonresident assets the transfer agent in New York of a New Jersey corporation refused to make the transfer without the Comptroller's consent. That consent was refused, although the particular assets were not taxable. The delay caused a loss in the securities of \$14,000 and the executors sued the transfer agent. It was held that the transfer agent was not the agent of the executor and owed him no duty, and was not liable.

*Dunham v. City Trust Co.*, 115 App. Div. 584; 101 Supp. 87; aff. 193 N. Y. 642; 86 N. E. 1123.

**c. CONSENT FOR TRANSFER OF FUNDS.**

In New York: “It is the practice in reference to the estates of resident decedents for the Comptroller to give a written consent for the transfer of funds in bank, and

stocks, bonds, or other securities as soon as the executor or administrator has qualified and application is made therefore by such representative or by the depositories named, and in case it is desired to transfer the contents of a safe deposit box, the Comptroller will have a representative present to examine the contents of such box and will consent in writing to the transfer thereof to the proper representative. In case of non resident decedents, where ancillary letters have not been issued by a Surrogate of this State, the consent of the Comptroller for the delivery or transfer of the securities, etc., is withheld until the question of the taxability of the property within the State is determined, and if taxable, the tax paid, after which the written consent to transfer each security or deposit will be given.

“In several of the largest counties it has been the practice for the Comptroller to give the resident attorney a power of attorney to issue waivers and consents for the transfer of funds of a resident decedent in the banks and trust companies of such county respectively, and also to attend and represent the Comptroller at the opening of safe deposit boxes, which avoids the necessary delay in making requests and obtaining waivers and consents through the mails.”

McElroy on Transfer Tax Law.

A similar practice obtains in all the States where there are large cities. The details can be learned by addressing the official or department in the list foregoing.

#### d. PROPERTY BELONGING TO ANOTHER.

Property belonging to another found in safe deposit box of decedent renders it necessary for the representatives of the estate of the decedent to explain its presence there.

*Matter of Francis*, N. Y. L. J., August 12, 1913; aff. 163 App. Div. 957.

As, for example, when bonds were found in an envelope endorsed by the deceased with the name of his adopted daughter, the Surrogate said:

“The endorsement on the paper containing the bonds constituted a declaration by the decedent that the bonds were the property of Florence Elizabeth Crusius. This declaration raises a presumption that the bonds were her property. The presumption, however, was rebutted by the testimony of the executor. He testified that ‘she did not know that such bonds were in existence, or that the papers in reference to it gave her the bonds. There is no proof of a gift; on the contrary, the evidence shows that the bonds were never delivered by the decedent to Florence Elizabeth Crusius. It must therefore be held, for the purpose of this proceeding, that the decedent did not make a valid gift *inter vivos* of the bonds to Florence Elizabeth Crusius.’”

*Matter of Crusius*, N. Y. L. J., February 26, 1914.

#### 4. Inventory.

##### a. MUST BE FILED BY EXECUTOR.

The statutes generally require the executor or administrator to file an inventory, and, in case of large estates, he may be required to file half a dozen,—one in the State of domicile, one with the Collector of Internal Revenue for the Federal tax, and an inventory of the personal or real property of the decedent situated in a foreign State.

The will cannot dispense with an inventory.

*Matter of Morris*, 138 N. C. 259; 50 S. E. 682.

And it must include personal property without the State even though it can never come into the executor's possession.

*Appeal of Hopkins*, 77 Conn. 644, 645; 60 A. 657.

*State v. Bullen*, 143 Wis. 512; 128 N. W. 109.



It has been held that the State must show that the estate is taxable before it can compel the executor to file an inventory.

*In re Estate of Stone*, 132 Ia. 136; 109 N. W. 455.

And that he cannot be compelled to answer questions concerning the property of decedent unless the State has jurisdiction to impose a tax.

*Matter of Bishop*, 82 App. Div. 112; 81 Supp. 474.

But if such jurisdiction exists he may be punished for contempt on failure to answer property questions.

*Matter of David Kennedy*, 113 App. Div. 4-8; 99 Supp. 72.

But an executor of a resident decedent must file an inventory — he has no discretion.

*Hooper v. Bradford*, 178 Mass. 95; 59 N. E. 678.

And a decree fixing tax, rendered in the absence of an inventory, must be reversed, although it is claimed that all necessary information was before the court.

*People v. Sholem*, 244 Ill. 502; 91 N. E. 704.

The court said in the *Sholem* case:

“The people have the right to compel the filing in the County Court of the inventories required to be filed by the executor and by surviving partners to aid in determining the extent and value of the estate for inheritance tax purposes, and, while such inventory is not conclusive, the people have the right to have the benefit thereof without having the burden of proving the value of the estate by examining witnesses.

#### b. FORMS OF AFFIDAVIT.

The following forms of executor's or administrator's affidavit used in New York county may be of assistance:

## SURROGATE'S COURT,

COUNTY OF NEW YORK.

In the Matter	}
of	
The Appraisal, under the Transfer	
Tax Law, of the Estate of	
..... Deceased.	

STATE OF NEW YORK,	}	ss.:
COUNTY OF NEW YORK,		
CITY OF NEW YORK,		

....., Executor of the estate of the above-named decedent, being duly sworn in this proceeding for the determination of the tax, if any, to be paid upon the assets of the said estate under the Law in Relation to Taxable Transfers of Property, deposes and says:

First.—That the said decedent died a resident of the County of New York, State of New York, on the ..... day of ..... leaving a Last Will and Testament, a copy of which is herewith submitted, which was duly admitted to probate by the Surrogate's Court of New York County, on the ..... of ..... and that Letters testamentary were duly issued by the said Surrogate's Court of New York County on the ..... of ..... to this deponent whose post office address is .....

Second.—That as such executor deponent is personally familiar with the affairs of said estate, the property constituting the assets thereof and their fair market value, and with the debts, expenses and charges properly and legally allowable as deductions therefrom. That the decedent at the time of her death had no safe deposit box.

That to the best of deponent's knowledge, information and belief, there is no person better informed than deponent upon the said affairs of this estate.

Third.—That Schedule A hereunto annexed in its various sub-schedules sets forth fully and in detail all the real property in the State of New York, and all the personal property wheresoever situated, owned by the decedent or in which said decedent had any right, title or interest at the time of her death, or of which she made any gift, grant or conveyance in contemplation of death, or to take effect at or after death, or which by reason thereof fell into or became part of the assets of this estate by reversion, remainder or otherwise, excepting such as may have passed by virtue of the exercise by the decedent of any power of appointment vested in her by the will or deed or other instrument of another, and enumerated in Schedule C.

Schedule A1 sets forth each and every parcel of real estate in the State of New York of which decedent died seized and possessed, or in which she had any right, title or interest, together with a statement of the liens and encumbrances upon each at the date of death, giving in the case of mortgages, the date, place, liber and page of record thereof. It also sets forth in the first marginal column the assessed valuation of each of said parcels and in the second marginal column the estimated market value thereof (as appraised by a competent expert in real estate values, whose supplemental affidavit is herewith submitted).

Schedule A2 sets forth all of the moneys left by the decedent at the time of her death, whether in her immediate possession, standing to her credit or in which she had any right, title or interest, in banks of deposit, savings banks, trust companies, or other institutions, whether individually or in trust for or jointly with any other person, giving also separately the accrued interest thereon, if any, down to the

last interest day prior to decedent's death in the case of savings banks, and down to the date of decedent's death in all other cases.

Schedule A3 sets forth all wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automobiles, boats, and any and all other personal chattels of whatsoever kind or nature, left by the decedent, together with the fairly estimated market value thereof (as appraised by a competent expert, whose supplementary affidavit is herewith submitted). It also contains a statement of all bonds and mortgages held by decedent and of all claims due and owing decedent at the time of her death, and of all the promissory notes or other instruments in writing for the payment of money of which she died possessed, of whatsoever nature, with interest thereon, if any (except such as are included in the statement of the decedent's interest in a copartnership or business set forth in Schedule A5) giving the face value and estimated fair market values thereof and if such estimated fair market values be less than the face value, setting forth in brief the reason for such depreciation as to each item. Said Schedule A3 also contains a statement of any and all moneys payable to the estate from life insurance policies carried by decedent.

Schedule A4 sets forth all the corporate stocks, bonds and accrued interest thereon to the date of decedent's death, or other investment securities owned by the decedent at the time of her death, with the market value thereof at such time, and in the case of rare and unlisted corporate securities giving the State of incorporation of the corporation issuing the same, its capitalization, the value and nature of its assets, its liabilities, its surplus, the book value of its stock, the dividends paid, and any other facts which may be pertinent affecting the value of said securities.

Schedule A5 sets forth the interest of decedent at the time of her death in any copartnership or business, stating the nature and location thereof, the total capital employed, the gross profits, expenses and net profits of the business for at least three years prior to decedent's death, and any other facts pertaining to such business as may be pertinent to a fair and just appraisal of decedent's interest in said business and the goodwill thereof.

Schedule A6 sets forth in itemized form, together with the fair market value thereof, any other property owned or left by decedent at the time of her death and not included in the preceding sub-schedules.

Fourth.— That Schedule B hereunto annexed in its various sub-schedules sets forth the funeral expenses, administration expenses and counsel fees paid or incurred in connection with the estate, together with the debts and claims against the decedent (except liens and incumbrances upon real estate), whether allowed, paid or contested and rejected by the executor. Deponent also claims to be allowed as a deduction herein the lawful commissions of the executor.

Schedule B1 sets forth the funeral expenses. Schedule B2 sets forth the expenses of administration and counsel fees paid or estimated. Schedule B3 sets forth the valid debts due and owing by decedent at the time of her death and allowed as just and fair by the executor, together with a separate list of such claims as have been contested or rejected by her (except such as enter into the computation of decedent's interest in any copartnership or business as set forth in Schedule A5). Schedule B3 also sets forth all items claimed by the executor as proper deductions herein, and not included in the prior sub-schedules.

Fifth.— That Schedule C hereunto annexed sets forth all the property, real and personal, which passed at decedent's

death by virtue of the exercise by her of any power of appointment vested in her by the will, deed or other instrument of another, together with the fair market value of each and every item thereof and a statement in brief of the sources and derivation of such power, copies of which will, deed or other instrument are submitted herewith. Said Schedule C also sets forth all transfers of any property made by way of gifts, either in trust or otherwise, by decedent at any time prior to her death, which said transfers were made in contemplation of death or to take effect at or after death.

Sixth.—That Schedule D hereunto annexed contains a statement of the names of all persons beneficially interested in this estate at the time of decedent's death, the nature of their respective interests, their relationship, if any, to decedent, together with the ages at the time of decedent's death of all minors, annuitants and beneficiaries for life under decedent's will, if any. It also contains a statement showing which of the beneficiaries named in decedent's will, if any, died prior to decedent, the dates of their deaths, their survivors, and the relationship of such survivor to decedent.

Seventh.—That deponent has made due and diligent search for property of every kind, nature and description left by the decedent, and has been able to discover only that set forth in Schedule A, and that no information of any other property of the decedent has come to his knowledge, and that he verily believes that decedent left no property except as therein set forth. That all the sums claimed as deductions in Schedule B are lawful, just and fair, that to the best of deponent's knowledge, information and belief the decedent made no gift, grant or conveyance of any property, real or personal, in contemplation of death, or to take effect at or after death, except as may be so specifically set forth in the appropriate sub-schedule of Schedule A.

Deponent further says that wherever in any of said sub-schedules the word “none” has been written in or wherever such sub-schedule has been left blank, such word or omission is to be taken as equivalent to an affirmative allegation by deponent that the decedent left no property of the kind to which sub-schedule relates.

.....

Signature.

Sworn to before me this .....

day of ....., 19..

### C. PREPARATION OF INVENTORY.

Schedule A1 — Should set forth, by the description in the deed, each parcel of real estate, within the State, of which the deceased died seized; or in which he had any right, title or interest.

If it is not within the State it should not be included, because not taxable.

*Matter of Swift*, 137 N. 1. 77; 32 N. E. 1096.

Unless there is to be an apportionment of debts and assets and, of course, all personal property outside the State must be included.

*Matter of Bridgeport Land Co.*, 77 Conn. 657; 60 A. 662.

Real estate in another country must be inventoried and appraised.

*Stringer v. Commonwealth*, 26 Pa. St. 429.

The improvements or buildings on the property should be described; if the property is unimproved it should be so stated. Accrued rents prior to testator's death should be included.

*Matter of Keefe*, 164 N. Y. 352.

The last assessed valuation, prior to death, on each parcel, should be given. It is the practice in most jurisdictions

to add the supplementary affidavit of an expert giving his valuation of the premises. If there have been sales in the vicinity before or shortly after death the affidavit should include a statement of them, as this is the best evidence of value.

*Matter of Arnold*, 114 App. Div. 244; 99 Supp. 740.

As mortgages are deducted from the value of the real estate they should be set forth, if there are any on the property.

*Matter of Sutton*, 3 App. Div. 308; 38 Supp. 277; aff. 149 N. Y. 618; 44 N. E. 1128.

Taxes which become a lien prior to death should also be set forth here.

*Matter of Babcock*, 115 N. Y. 450; 22 N. E. 263.

*Matter of Freund*, 143 App. Div. 335; 28 Supp. 48; aff. 202 N. Y. 556; 95 N. E. 1129.

Rent accrued prior to death is an asset and should be set forth as personal property under the appropriate subdivision.

*Jay v. Kirkpatrick*, 26 Misc. 550.

If dower is claimed as a deduction the claim should be set forth here and the date of the birth of the widow should be given in order that the value of her dower interest may be calculated under the mortality tables.

Devolution of title should be shown where the interest is other than fee simple in order to indicate how the interest was created.

Schedule A2 — Cash on hand and on deposit.

All moneys left by the decedent at the time of his death, in banks of deposit, savings banks, trust companies, or other institutions, should be itemized and set forth in this schedule. This means money wherever situated, and deposits no matter whether in New York or foreign banks.



Joint and trust accounts should be set forth in this schedule.

See *ante*, Part II, F, p. 197.

Interest accrued and unpaid, distinct from the principal, should be set forth separately. In the case of savings banks, interest should be given down to the last interest day prior to decedent's death; in all other cases down to the date of death. Accrued interest to date of death is subject to the tax.

*Matter of Vassar*, 127 N. Y. 1-8.

*Matter of Hewitt*, 181 N. Y. 547.

Schedule A3 — Mortgages, promissory notes, claims due decedent, life insurance.

Mortgages held by decedent should be included in this schedule. The names of the parties, the date of the mortgage, a brief description of the premises mortgaged, the amount of the principal, the interest rate and the interest dates, the place, date, liber and page of recording mortgage, should be given. If any amount has been paid on account of the principal of the mortgage, so state.

Accrued interest on mortgages to date of decedent's death should be separately stated.

All claims in favor of the estate should be included whether valuable or worthless, and if in the form of notes or other written instruments for the payment of money they should be set forth, giving date, name of maker, date when due, rate of interest, amount of interest accrued to date of death.

A debt forgiven by the will should be set forth in this schedule as an asset of the estate.

*Matter of Bartlett*, 4 Misc. 380; 25 Supp. 990.

For further discussion as to such debts, see *ante*, pp. 97, 377, and cases there cited.

Pictures, books, jewelry, silverware, works of art, etc., as well as furniture, carriages, horses, motor cars, wearing apparel and all other personal chattels, must be set forth in this schedule.

They must be itemized.

*Matter of Leggett*, N. Y. L. J., January 13, 1911.

Where the pictures are of value the name of the painting and of the artist should be given.

*Matter of Kahn*, N. Y. L. J., March 16, 1912.

Schedule A4 — Corporate stocks and bonds.

In this schedule should be set forth all corporate securities, including any shares in joint stock associations.

Interest accrued to date of death on bonds and dividends declared on stock, even though paid after death, are part of the estate and should be separately stated.

*Matter of Kernochan*, 104 N. Y. 618; 11 N. E. 149.

The denomination of the bond should be given, and if the corporation has issued more than one kind of bond that owned by the decedent should be identified.

In listing the stock, state the name of the corporation, and if the corporation issues different kinds of stock indicate which. State the par value and the market value.

The stock is taxable though carried in the name of the brokers.

*Matter of Newcomb*, 71 App. Div. 606; 76 Supp. 222; aff. 172 N. Y. 608; 64 N. E. 1123.

Securities pledged as collateral should be placed in this schedule, calling attention to the fact that the securities were pledged at the date of decedent's death, and that the amount for which they are pledged is set forth under Schedule B3. A statement should be added that the securities so given are the same securities for which the debt is set forth under B3.

**Schedule A5 — Interest of decedent in any copartnership or business.**

In this schedule should be set forth the interest of decedent at the time of his death in any copartnership or business, stating the nature and location thereof, the total capital employed, the gross profits, expenses and net profits of the business for at least three years prior to decedent's death.

If the decedent was not interested in any copartnership or business, say so, and state his occupation or profession.

**Schedule A6 — Property not included in other schedules.**

In this schedule should be set forth any property left by decedent of whatever kind and nature not included in the foregoing schedules except property passing by power of appointment, which should be set forth in Schedule C.

When there is an interest in the estate of another decedent it should be set forth in this schedule; also a remainder interest where there is a surviving life tenant. In the latter case the age of the life tenant should be given so the value of his interest may be calculated.

There should be set out an itemized statement of the assets of the estate in which decedent had the remainder interest. These assets must be given with the same detail as though they were the assets of the estate of the decedent.

**Schedule B1 — Funeral expenses.**

The undertaker's bill, cost of advertising death notice, and expense of funeral service should all be separately stated.

The cost of a tombstone is allowed as a deduction.

*Matter of Edgerton*, 35 App. Div. 125; 54 Supp. 700; aff. 158 N. Y. 671; 52 N. E. 1124.

**And of a cemetery lot.**

*Matter of Maverick*, 135 App. Div. 44; 119 Supp. 914; aff. 198 N. Y. 618; 92 N. E. 1084.

## Schedule B2 — Administration expenses.

Under this head should be set forth the expenses of administration, which include the counsel fees and disbursements necessary in the administration of the estate.

*Matter of Westurn*, 152 N. Y. 93-102; 46 N. E. 315.

*Matter of Purdy*, 24 Misc. 301; 53 Supp. 735.

Counsel fees must be reasonable.

*Matter of Thomas*, 39 Misc. 223; 79 Supp. 571.

Expenses of litigation are allowed when incurred to conserve the estate.

*Matter of Gihon*, 169 N. Y. 443; 62 N. E. 561.

But disallowed when arising from disputes among the beneficiaries.

*Matter of Westurn*, 152 N. Y. 93; 46 N. E. 315.

Commissions of the executor or administrator are allowed; but not where the will provides that they shall act without compensation.

*Matter of Vanderbilt*, 68 App. Div. 27, 30; 74 Supp. 450.

But not on specific bequests.

*Matter of Kings County Trust Co.*, 69 Misc. 531; 127 Supp. 879.

Or on real estate unless the will provides for its sale.

*Matter of Saunders*, 77 Misc. 54, 67; 137 Supp. 438; aff. 156 App. Div. 891.

In which case broker's commissions are allowed also.

*Matter of Rothschild*, 63 Misc. 615; 118 Supp. 654.

*Matter of Shields*, 68 Misc. 264; 124 Supp. 1003.

Temporary administrators' commissions are allowed.

*Matter of Hurst*, 111 App. Div. 460; 97 Supp. 697.

Trustees' commissions are a proper deduction.

*Matter of Silliman*, 79 App. Div. 98; 80 Supp. 336; aff. 175 N. Y. 513; 67 N. E. 1090.

As to double commissions where executors are also trustees, *vide ante*, Pt. IV, under “Deductions,” p. 388.

#### Schedule B3 — Debts of decedent.

This schedule should set forth all the debts of and claims against the decedent.

Recite which have been paid or allowed. If any claims have been rejected, state which they are, and give the status of each rejected claim.

Mortgage debts belong in Schedule A, not in this schedule.

Doubtful claims should not be allowed as a deduction, but should be recited in the appraiser's report, and also in the order fixing tax, that the question of the deduction is postponed until the determination of the claim.

*Matter of Dimon*, 82 App. Div. 107; 81 Supp. 428.

Where the estate has indemnity for a claim against it the indemnity must be set off against the debt.

*Matter of Skinner*, 106 App. Div. 217; 94 Supp. 144.

Claims barred by the statute of limitations should not be deducted.

See generally:

*Hamlin v. Smith*, 72 App. Div. 601; 76 Supp. 258.

*Holley v. Gibbons*, 176 N. Y. 520; 68 N. E. 889.

*Schutz v. Morette*, 146 N. Y. 137; 40 N. E. 780.

*Butler v. Johnson*, 111 N. Y. 204; 18 N. E. 643.

And generally, if there is a defense to any claim against the estate and the executor or administrator intends to reject it — as a claim barred by the statute of frauds — the defense should be stated and the tax as to the amount of the claim should be suspended — or the deduction disallowed.

Schedule B4 — Deductions claimed and not included in the preceding sub-schedules.

In this schedule should be set forth every deduction

claimed that is not classified as a funeral expense, an expense of administration or a debt of the decedent. They must be separately stated and itemized.

*Matter of Friedlander*, N. Y. L. J., March 8, 1911.

Exemptions are not included under this head. They are not deductions from the gross estate and have nothing to do with the inventory, but are allowed when the tax is fixed by the Surrogate.

Schedule C — Property passing by decedent's exercise of any power of appointment.

If there was a power of appointment which was not exercised the fact should be stated.

All the assets must be set forth with the same detail and particularity as in the main schedules.

If a power of appointment has been created by the will that fact should be set forth and the assets covered by the power separately stated, as taxation as to them must be suspended until it is determined whether they pass under the will of the donor, in case of failure to exercise the power. As to this subject, *vide ante*, "Powers of Appointment."

Schedule D — Beneficiaries and their interest.

The statement should include, as accurately as possible, the names and addresses of the beneficiaries, the nature of their respective interests, their relationship, if any, to the decedent, together with the ages at the time of decedent's death of all minors, annuitants and beneficiaries for life under decedent's will, if any.

It should also state if any of the beneficiaries named in decedent's will died prior to decedent.

*Morgan v. Cowie*, 49 App. Div. 612-615; 63 Supp. 608.

If the devise or bequest to beneficiaries who predecease testator does not fall into the residuary estate then the facts should be given showing to whom the interest goes.

In case of an adopted child the facts should be set forth showing the adoption.

*Matter of Butler*, 58 Hun, 400; 12 Supp. 201; aff. 136 N. Y. 649; 32 N. E. 1016.

And if “mutually acknowledged,” the facts bringing the beneficiary within the statute must be clearly established by affidavit or testimony if the latter is required.

*Matter of Birdsall*, 22 Misc. 180-187; 49 Supp. 450; aff. 43 App. Div. 624; 60 Supp. 1133.

*Matter of McMurray*, 96 App. Div. 128; 89 Supp. 71.

*Matter of Davis*, 98 App. Div. 546-549; 90 Supp. 244; revd. on other points, 184 N. Y. 299; 77 N. E. 259.

The beneficiary is competent witness to give evidence upon the question of the relation and the acknowledgment thereof.

*Matter of Brundage*, 31 App. Div. 348-352.

#### d. FORM OF INVENTORY.

Following is the inventory filed in a recent litigated case arising in New York county:

### AFFIDAVIT AND SCHEDULES

#### SCHEDULE A.

##### A1.— Real property.

	Assessed value for year of decedent's death	Estimated market value	Value as ap- praised in this proceed- ing Equity
Undivided one-fourth in- terest in Lot No. 1 on Map of Prospect Hill, Pelham Manor, Town of Pelham, Westchester County, New York. Total lot assessed at \$2,000. Decedent's one- fourth interest only....	\$500 00	\$937 50	\$937 50

	Assessed value for year of decedent's death	Estimated market value	Value as ap- praised in this proceed- ing Equity
Undivided one-half in- terest in Lot 350 on Map of Pelhamville, Town of Pelham, West- chester County, New York. Total lot as- sessed at \$800. De- cedent's one-half in- terest only .....	\$400 00	\$850 00	\$850 00
Undivided one-half in- terest in Lot No. 371 on Map of Pelhamville, Town of Pelham, West- chester County, New York. Total lot as- sessed at \$400. De- cedent's one-half in- terest only .....	200 00	500 00	500 00
		<hr/>	<hr/>
		\$2,287 50	\$2,287 50
		<hr/>	<hr/>

## SCHEDULE A.

## A2.—Cash in hand and on deposit.

	Amount	Value as ap- praised in this proceeding
Balance standing to credit of decedent in his account at National Park Bank.....	\$8,465 44	\$8,465 44
At Equitable Trust Company...	23 93	23 93
Four certificates of deposit in United States Trust Co. as follows:		



	Amount	Value as appraised in this proceeding
Certificate No. B-5109.....	\$1,000 00	\$1,000 00
Accrued interest .....	374 85	374 85
Certificate No. B-18966.....	2,500 00	2,500 00
Accrued interest .....	647 15	647 15
Certificate No. B-34517.....	3,000 00	3,000 00
Accrued interest .....	380 59	380 59
Certificate No. 38657.....	18,000 00	18,000 00
Accrued interest .....	392 25	392 25
	<hr/>	<hr/>

Savings bank accounts as follows, with accrued interest to July 1st, 1914:

East River Savings Bank No. 90735.....	\$3,447 33	\$3,447 33
Emigrant Industrial Savings Bank No. 327283.....	114 76	114 76
Bank for Savings No. 687659....	1,048 68	1,048 68
Bank for Savings No. 687965....	974 73	974 73
Seamen's Bank for Savings No. 330709 .....	1,453 07	1,453 07
Seamen's Bank for Savings No. 332812 .....	1,052 06	1,052 06
Greenwich Savings Bank No. 279177.....	140 25	140 25
Bowery Savings Bank No. 755122.....	2,817 64	2,817 64
Bowery Savings Bank No. 754977.....	2,949 56	2,949 56
	<hr/>	<hr/>
	\$48,782 29	\$48,782 29
	<hr/>	<hr/>

## SCHEDULE A.

## A3.—Personal chattels — bonds and mortgages, promissory notes, claims, insurance, etc.

	Estimated market value	Value as ap- praised in this proceeding
Bonds and mortgages as fol- lows:		
Cor. Johnson & Union Avenues, Brooklyn. . . . .	\$12,000 00	\$12,000 00
4½% interest from July 1st, 1914. . . . .	217 50	217 50
Cor. 5th Avenue & 40th Street, Brooklyn. . . . .	12,000 00	12,000 00
4½% interest from October 1st, 1914 . . . . .	82 50	82 50
Jamaica Avenue, east of Colum- bia Avenue, Brooklyn. . . . .	5,500 00	5,500 00
4½% interest from November 1st, 1914 . . . . .	17 19	17 19
83rd Street, west of Second Avenue, Brooklyn . . . . .	5,000 00	5,000 00
4½% interest from October 1st, 1914 . . . . .	34 38	34 38
83rd Street, west of Second Avenue, Brooklyn . . . . .	5,500 00	5,500 00
4½% interest from October 1st, 1914 . . . . .	37 81	37 81
Adelphi Street, south of DeKalb Avenue, Brooklyn . . . . .	4,500 00	4,500 00
4½% interest from October 1st, 1914 . . . . .	30 94	30 94
Three registered U. S. Govern- ment bonds, series dated August 1, 1898. Int. 3%.		

	Amount	Value as appraised in this proceeding
Bond No. 1729.....	\$1,000 00	\$1,000 00
Bond No. 1730.....	1,000 00	1,000 00
Bond No. 20846.....	500 00	500 00
3% interest on same from November 1st, 1914.....	5 00	5 00
	<hr/>	<hr/>
	\$47,425 32	\$47,425 32
	<hr/>	<hr/>

## SCHEDULE A.

## A4.—Corporate Bonds and Stocks.

	Estimated market value	Value as appraised in this proceeding
Certificates for 33 shares Common Stock of Auto Sales Gum & Chocolate Co., N. Y. Corporation capital \$6,000,000; par value of shares \$100 each. Market quotation November 25th, 1914, 9 bid, 10½ asked.....	\$297 00	\$297 00
\$3,000 par value of Auto Sales Gum & Chocolate Co. 6% bonds. Market quotation November 25th, 1914, at 45.....	1,350 00	1,350 00
Certificate for 5,000 shares of Sunday Nevada Mining Co. Stock, p. v. \$1.00, S. Dakota Corporation, capital \$1,500,000.....	0	0
Certificate for 10 shares of capital stock of Gas Engine		

	Estimated market value	Value as ap- praised in this proceeding
& Power Co. and Charles L. Seabury & Co. (consolidated), p. v. \$1.00. Capital \$6,000,000. N. Y. Memo attached to said certificate signed by Chas. Cory & John M. Cory stating that each owns 5 shares.		
Property of decedent therein was only 5 shares.....	\$250 00	\$250 00
(See letter of Gas Engine & Power Co. & C. L. Seabury & Co. annexed as to value.)		
Certificate for 1 share preferred capital stock of Guana-juato Development Company (N. J.). Par value \$100. Capital \$1,000,000 Pfd.; \$3,000,000 Common. ....	0	3
500 shares Capital stock of Chas. Cory & Son (N. Y.). Capital \$100,000, p. v. \$100 each. One half of entire capital stock was owned by Chas. Cory and the other half by John M. Cory. By agreement between them it was provided that the survivor should purchase the stock of the one who should first die and pay \$30,000 for same. Stock of deceased		

	Estimated market value	Value as ap- praised in this proceeding
has been sold by executor for that sum pursuant to said agreement, a copy of which is hereto annexed.....	\$30,000 00	\$103,400 00
	<hr/>	<hr/>
	\$31,897	\$105,300 00
	<hr/>	<hr/>

## SCHEDULE A.

A5.— Interest of decedent in any copartnership or  
business.

None.

## SCHEDULE A.

A6.— Property left by decedent of whatever kind or nature  
not included in the foregoing sub-schedules.

None.

## SCHEDULE B.

B1.— Funeral expenses.

	Claimed	Allowed in this proceeding
Rev. S. De Lancey Townsend, Clergyman.....	\$100 00	\$100 00
John Irving, Jr., Undertaker....	703 50	703 50
Boulevard Floral Co., Flowers..	185 50	185 50
T. Pitbladdo, Monument work...	42 45	42 45
J. Weir & Co., Inc., Gardeners..	18 00	18 00
	<hr/>	<hr/>
	\$1,049 45	\$1,049 45
	<hr/>	<hr/>

## SCHEDULE B.

## B2.—Administration expenses.

	Claimed	Allowed in this proceeding
Commissions of Executor to be computed.		
Counsel fees, including cost of advertising for claims, court fees and incidental disburse- ments estimated .....	\$2,500 00	\$2,500 00
	<hr/> <hr/>	<hr/> <hr/>

## SCHEDULE B.

## B3.—Debts of decedent.

	Claimed	Allowed in this proceeding
Guaranty Trust Co., loan on collateral \$600 with interest from October 14, 1914.....	\$604 00	\$604 00
Dr. Daniel B. Brinsmade.....	116 00	116 00
E. Hofstaetter & Co.....	3 50	3 50
Federal Income Tax Jan. 1 to Nov. 25, 1914.....	52 63	52 63
	<hr/>	<hr/>
	\$776 13	\$776 13
	<hr/> <hr/>	<hr/> <hr/>

## SCHEDULE B.

B4.—Deductions claimed and not included in the preceding  
sub-schedules.

	Claimed	Allowed in this proceeding
John M. Cory, brother and legatee. ....	\$5,000 00	

Allowed  
in this  
proceeding

	Claimed	
Ella Cory, sister and legatee. . . .	\$5,000 00	
Mary J. Cory, sister and legatee. . .	5,000 00	

00

NOTE.—This was a mistake — exemptions are not deductions and should not be set forth in the inventory, as they are taken from the net estate.

### SCHEDULE C.

Property passing by decedent's exercise of any power of appointment vested in him under the will, deed or other instrument of another.

None.

### SCHEDULE D.

Beneficiaries and their interests, etc.

John M. Cory, brother and  
legatee, equal one-third of  
estate.

Mary J. Cory,  
equal one-third of estate.

Ella Cory,  
equal one-third of estate.

## B.— PROCEEDINGS BEFORE APPRAISER.

In many States (but not New York) the Surrogate, Probate Judge, Tax Commission or Comptroller assess the tax upon the valuations of the inventory, unless there is some reason for being dissatisfied, in which case supplemental affidavits are required or an appraiser is appointed. In case of any controversy an appraiser is always appointed who reports to the Surrogate or Probate Judge who assesses the tax upon his report.

## 1. Appraisers.

### a. APPOINTMENT AND REMOVAL.

In all the large jurisdictions permanent appraisers are appointed. Such an appraiser is a public officer with quasi-judicial functions.

*Matter of Hull*, 109 App. Div. 248; 95 Supp. 819.

In New York the appraisers are appointed by the State Comptroller, and one of the appraisers so appointed must be designated by the Surrogate.

*Matter of Sondheim*, 69 App. Div. 5; 74 Supp. 510.

An appraiser so appointed is a public officer and not subject to the Civil Service Laws.

*Weeks v. Kraft*, 147 App. Div. 403; 132 Supp. 228.

Nor to the Veteran Acts and may be removed without notice and a hearing even though a veteran or exempt fireman.

*People ex rel. McNeile v. Glynn*, 128 App. Div. 257; 112 Supp. 695.

*People ex rel. McKnight v. Glynn*, 56 Misc. 35; 106 Supp. 956.

The Surrogate may designate an appraiser on his own motion or upon petition.

*Matter of O'Donohue*, 44 App. Div. 186; 59 Supp. 1087; 60 Supp. 690.

The provision requiring County Treasurers to act as appraisers in certain counties is constitutional.

*Matter of Fuller*, 62 App. Div. 428; 71 Supp. 40.

In nearly all the States excepting New York the appraiser is appointed and removed by the court.

Where the court was dissatisfied with the appraisal it had power of its own motion to vacate the order appointing an appraiser and appoint a new appraiser and direct him to make a new appraisal on the ground that the original report was insufficient and that the court could not determine the tax therefrom.

*County Court v. Watson*, 51 Colo. 405; 118 Pac. 974.



But the previously appointed appraiser must be removed for neglect of duty or other proper cause before a new appraiser can be appointed.

*Wingert v. State*, 125 Md. 536, 542; 94 A. 166.

And in case of fraud or error the court can always order a reappraisal before another appraiser.

*State v. District Court*, 41 Mont. 357; 109 Pac. 438.

The duty of the Surrogate to appoint an appraiser is imperative and he can be compelled to act by mandamus.

*Kelsey v. Church*, 112 App. Div. 408; 98 Supp. 535.

The Surrogate may act as appraiser under section 231 of the New York statute.

*Matter of Baker*, 38 Misc. 151; 77 Supp. 170.

*Matter of Cameron*, 97 App. Div. 436; 89 Supp. 977; aff. 181 N. Y. 560; 74 N. E. 1115.

*Matter of Costello*, 189 N. Y. 288; 82 N. E. 139.

*Matter of Whitewright*, 87 Misc. 534; 151 Supp. 241.

Where property of a decedent is situated in several counties, the appraiser appointed by the Surrogate first acquiring jurisdiction may appraise all.

*Matter of Keenan*, 22 N. Y. St. Rep. 79; 5 Supp. 200.

#### b. POWERS AND DUTIES.

The functions of an appraiser are in many respects judicial as well as ministerial.

*Matter of Ullmann*, 137 N. Y. 403; 33 N. E. 480.

“He must have a knowledge of trusts and of wills, and devises and bequests, and of the descent and distribution of property of decedents. He must be an expert upon the value of stocks and bonds and personal property in general. He must be capable of ascertaining the value of real property and of conducting examinations and deciding questions of fact as to residence, relationship and the like.”

*Weeks v. Kraft*, 147 App. Div. 403; 132 Supp. 228.

But it is no part of the duty of an appraiser to write legal opinions, and such an opinion must be stricken from the record. In so holding the court said:

“The duties of an appraiser under the Tax Law are specified in section 230. They do not include the writing of legal opinions or memoranda of law. The responsibility for deciding disputed questions of law is placed upon the Surrogate, acting in his judicial capacity, and any assistance which he may need in the performance of his duty is generally supplied by the briefs submitted by the parties to the appeal. While this court does not desire to interfere in any way with the individual preferences of appraisers in making their reports, it feels bound to intimate that its records should not be unnecessarily incumbered, and that memoranda by the appraisers on questions of law should be omitted from their reports. It is unfair to any party appealing to the Appellate Division from the decision of the Surrogate to be compelled to print as part of the record the legal opinion of an appraiser. The motion to strike the memorandum from the record is therefore granted.”

*Matter of Von Bernuth*, 103 Misc. 521; 171 Supp. 764.

The appraiser has power to issue subpoenas and compel the attendance of witnesses. His powers and duties are of a *quasi*-judicial character, and call for the exercise of sound judgment, discretion and a knowledge of legal principles. They partake of the nature of the acts of commissioners appointed by the court in condemnation proceedings and of referees to hear, try, and determine the issues in actions, or to take proof in actions and report the same to the court with their opinion thereon, all of which demand upon the part of the incumbent an understanding of statutory provisions and ability to pass upon complicated questions of law.

*People ex rel. McKnight v. Glynn*, 56 Misc. 35; 106 Supp. 956.

“Some of the functions of a taxing officer are ministerial, but it is well established by authority that in determining the value of the property assessed, the extent of claims to exemption, etc., the taxing officer or board acts judicially.”

*Matter of Hull*, 109 App. Div. 248; 95 Supp. 819.

“The function of an appraiser is somewhat similar to that of a jury called by the court in an equity case to aid its conscience. The whole matter is with the Surrogate and continues with him until final determination after appeal.”

*Matter of Thompson*, 57 App. Div. 317-319; 68 Supp. 18.

An appraiser must rule on admission of testimony.

*Morgan v. Warner*, 45 App. Div. 424-427; 60 Supp. 963; aff. 162 N. Y. 612; 57 N. E. 1118.

It frequently happens that an appraiser as part of his necessary duties must construe a will.

*Matter of Cager*, 111 N. Y. 343, 347; 18 N. E. 866.

*Matter of Ullman*, 137 N. Y. 403; 33 N. E. 480.

*Matter of Kimberly*, 150 N. Y. 90; 44 N. E. 945.

*Matter of Lynn*, 34 Misc. 681; 70 Supp. 730.

*Matter of Peters*, 69 App. Div. 465; 74 Supp. 1028.

A transfer tax appraiser has jurisdiction in the first instance to determine whether certain corporate stock constitutes a part of the estate to be appraised, and such determination must necessarily precede the valuation of said stock for the purposes of the transfer tax. The jurisdiction of the appraiser is not, however, exclusive, and on appeal from the order entered on his report the Surrogate has power to decide every question that may be raised in a proceeding under the statute.

*Matter of Barnes*, 83 Misc. 272; 144 Supp. 794.

The court said in *People ex rel. McKnight v. Glynn*, 56 Misc. 35, 106 Supp. 956:

“It is alleged that the transfer tax appraiser always acts

as a representative of the State Comptroller rather than as a disinterested arbiter. This, if true, is a violation of the obligations of the appraiser and not contemplated by the act. An appraiser should decide with entire impartiality the questions arising before him, whether of law or of fact or mixed questions of law and fact.

“The State Comptroller is only one of the parties to the proceeding before the appraiser, and is entitled to no more consideration than the representatives of the estate. An error of the appraiser in this regard cannot enter into the construction of the statute. The Surrogate may always correct such errors, if duly advised.

“The powers and duties of the tax appraisers are of a *quasi-judicial* character. They call for the exercise of sound judgment, discretion and knowledge of legal principles. They demand upon the part of the incumbent an understanding of statutory provisions and ability to pass upon complicated questions of law.”

The tendency has been more and more to emphasize the judicial functions of the appraiser. While he cannot himself issue a commission to take testimony in a foreign jurisdiction the Surrogate may issue the commission and the testimony may then be adduced before the appraiser.

*Matter of Wallace*, 71 App. Div. 284; 75 Supp. 838.

The appraiser may not determine questions of residence but the parties usually stipulate that he may take the evidence and submit it for determination to the Surrogate.

*Matter of Grant*, 83 Misc. 257; 144 Supp. 567; aff. 166 App. Div. 921; 151 Supp. 1119.

## 2. Notice.

### a. NOTICE IS JURISDICTIONAL.

A statute that imposes a tax and provides for no notice

or hearing or “day in court” for the person who must pay it is unconstitutional.

*Matter of Winters*, 21 Misc. 552; 48 Supp. 1097.

*Matter of McPherson*, 104 N. Y. 306; 10 N. E. 685.

*Ferry v. Campbell*, 110 Ia. 290; 81 N. W. 604.

*Martin v. Pollock* (Ga.), 87 S. E. 793.

*Matter of Haskins* (Cal.), 149 Pac. 576.

If there is a provision for appeal and rehearing before the court notice of appraisal is not necessary to make the act constitutional.

*Hostetter v. State*, 26 Ohio Cir. Ct. 702.

Notice of appraisal and right of appeal is sufficient notice and hearing.

*Matter of McPherson*, 104 N. Y. 306, 323; 10 N. E. 685.

*Trippet v. State*, 149 Cal. 521; 86 Pac. 1084.

Notice of appraisal must be given to all parties in interest and failure to do so will invalidate the proceedings.

*Matter of Wolfe*, 137 N. Y. 205; 33 N. E. 156.

*Matter of Backhouse*, 110 App. Div. 737; 96 Supp. 466; aff. 185 N. Y. 544; 77 N. E. 1181.

So where no proof of notice to parties interested was appended to report of appraiser the report was remitted with directions to give due notice and hold another hearing.

*Matter of Froment*, N. Y. L. J., November 29, 1916.

“It may be difficult in a given case for the court to ascertain the names and post-office addresses of all persons interested, but if the inconvenience and difficulty encountered in this regard is to determine the power of the court to proceed, then there would arise cases in which the court would be at a loss as to what disposition it should make of a distributive share. The court admitted the will to probate. It may be presumed that it has knowledge or the means of knowledge of all persons inter-

ested in the property disposed of by it, and can impart this knowledge to the appraiser in its direction to him as to the time which must intervene before the appraisement is made.

*State v. District Court*, 41 Mont. 357, 366; 109 Pac. 438.

And it must specify the property to be appraised to be binding.

*Matter of Morgan*, 164 App. Div. 854; 149 Supp. 1022; aff. 215 N. Y. (mem.).

The State Comptroller was not precluded from taking proceedings in 1902 to assess the transfer tax upon an estate where the decedent died, and whose will was proved in 1895, and the counsel for the estate was informed by the Surrogate, upon the basis of the executor's affidavit, that the estate was too small to be taxable,—it appearing that no decree was then or ever entered taxing or exempting the estate, and that consequently no notice of an appraisal was ever given to the persons legally entitled thereto.

*Matter of Schmidt*, 39 Misc. 77; 78 Supp. 879.

Parties upon whom notice is served are chargeable with notice of all subsequent proceedings, including the adjournments of the hearing from time to time; and it is not necessary that the new notice be served after adjournment.

*Hanberg v. Morgan*, 263 Ill. 616; 105 N. E. 720.

The proofs must also show that officers representing the people had due notice.

*Matter of Bolton*, 35 Misc. 688; 72 Supp. 430.

But this is not jurisdictional unless the statute requires it.

*State v. Branch* (Ark.), 200 S. W. 809.

But when the district attorney appears his authority will be presumed.

*Matter of Arnett*, 49 Hun, 599; 2 Supp. 428.

## b. NOTICE BY MAIL SUFFICIENT.

“The Legislature not having prescribed the kind of notice, it may be personal or by mail. If mailed, and the taxpayer lives in a city, the notice if possible should be directed to the street and number of his residence. It is so provided in St. 1909, c. 490, Part II, § 3, requiring a collector of taxes, after receiving a tax list and warrant, to send notice to each person who is assessed, whether resident or nonresident, of the amount of his taxes. The commissioner not having complied with the statute, the tax is uncollectible and the information must be dismissed with costs.”

*Attorney General v. Roche*, 219 Mass. 601; 107 N. E. 367.

Notice of application to assess a transfer tax should be given to a legatee, devisee or distributee upon whose interest a tax may be assessed. The statute does not prescribe the manner in which notice may be given on an application to assess a transfer tax, but where personal service is made either within or without the State, the requirements of section 2529 of the Code of Civil Procedure as to the number of days which must elapse between the date of service and the return date governs; in case service is made by mail, the time between the mailing of the notice of motion and the return day should be double that required in case of personal service.

*Matter of Whitewright*, 89 Misc. 97; 151 Supp. 241.

When an affidavit attached to transfer tax appraiser's report specifically alleges that notice of appraisal required by the statute was duly mailed to the executor his denial, on information and belief, that he received the notice, held insufficient.

*Matter of Hart*, 98 Misc. 515; 162 Supp. 716.

Although this case was reversed by the Appellate Divi-

sion, no criticism is made of the ground taken by the Surrogate. It appeared, however, that the appraiser who gave the notice resigned and that another appraiser was appointed in his place who proceeded without any further notice, relying on that given by the former appraiser. The Appellate Division held that this was not good service saying:

“We think that a transfer tax appraisal ends with the death, resignation or removal of an appraiser and that each appraiser must proceed *de novo*. The transfer tax could not be validly determined without notice to the parties interested and an opportunity to be heard, and the Legislature has so provided. There is no statutory provision continuing an appraisal proceeding commenced before one appraiser and permitting his successor to take up and complete his work and no decision sustaining the exercise of such power in a similar case is cited or has been found. It follows, therefore, that the order should be reversed.”

*Matter of Hart*, 179 App. Div. 39; 166 Supp. 188; aff. 222 N. Y. 660.

It seems to be the general doctrine that one appraisal exhausts the authority of the appraiser. He cannot make a new appraisal even where property was omitted.

*Re Freedley*, 21 Pa. St. 33.

*Re Monneypenny*, 181 Pa. St. 309; 37 A. 539.

#### c. WHERE NOTICE IS IMPOSSIBLE.

Where there is a bequest to a charitable corporation yet to be formed no service of process or notice of the appraisal proceedings could or would be binding upon it.

*People v. Kellogg*, 268 Ill. 489, 497; 109 N. E. 304.

#### d. PRESUMPTION OF NOTICE.

In the absence of proof to the contrary it will be presumed that the Surrogate has given the required notice



to all persons interested in the estate; but this presumption does not extend to appraisers.

*Matter of Miller*, 110 N. Y. 216; 18 N. E. 139.

And if the Surrogate in fact failed to give notice the decree may be opened.

*Matter of Daly*, 34 Misc. 148; 69 Supp. 494.

### 3. Hearings.

#### a. INFORMAL UPON AFFIDAVITS.

If the Comptroller's representative is satisfied with the valuations of the schedules he may accept them and the appraiser will then proceed upon the executor's affidavit.

Where the State Comptroller is dissatisfied with the value of an estate as given in affidavits submitted to a transfer tax appraiser on behalf of the estate, he should either examine the affiant as to the basis of his valuation or submit an appraisal by some one possessing the necessary qualifications therefor.

*Matter of Gale*, 83 Misc. 686; 145 Supp. 301.

If the schedules do not contain all the information desired it may be supplied by the executor, upon request, in the form of supporting or supplementary affidavits of appraisers of jewelry, real estate, and the like. Where the estate is of any size, however, oral testimony is almost always adduced.

“Inventories of estates of decedents made in pursuance of an order of the probate court issued under authority of a statute are admissible for many purposes against every person since they are made by those acting under authority of the law. An inventory or appraisal has, however, been rejected when offered against the administrator who was in no way connected with it and it was simply a sworn *ex parte* statement of third persons, though

it has been held *prima facie* evidence against him of the value of the assets in the absence of other proof of value.”

Chamberlayne on Evidence, § 3440.

The estimate of an appraiser appointed by one of the parties has no conclusive effect on the rights of the other except where the latter has co-operated in the appointment.

Chamberlayne on Evidence, § 2109.

The affidavits must show facts, not conclusions, to have any probative force or support the findings of the appraiser.

*Matter of G. C. Stone*, N. Y. L. J., February 18, 1911.

#### b. BURDEN OF PROOF.

In the first instance the burden of proof rests upon the Comptroller to show that assets are a part of the estate.

*Matter of Enston*, 113 N. Y. 174; 21 N. E. 87.

But a *prima facie* case is always sufficient.

*Matter of Lane*, 39 Misc. 522; 80 Supp. 381.

Circumstantial evidence may sustain it and overcome the direct assertion of an interested party.

*Matter of Palmer*, 117 App. Div. 360; 102 Supp. 236.

But mere suspicion that executor concealed assets is not enough.

*Matter of Peck*, 149 App. Div. 912; 133 Supp. 1136.

“Any apparent attempt, however, upon the part of the executors to evade the payment of a just tax, however reprehensible it may be, does not authorize either the appraiser or Surrogate to make an assessment upon suspicion or otherwise than upon convincing evidence of the transfer of property for which the tax is imposed by the statute.”

*Matter of Kennedy*, 113 App. Div. 4-8; 99 Supp. 72.

The burden rests on beneficiary when claiming exemption:

(1) As an adopted child:

*Matter of Davis*, 98 App. Div. 546; 90 Supp. 244.

*Matter of Birdsall*, 22 Misc. 180; 49 Supp. 450.

*Matter of Fisch*, 34 Misc. 146; 69 Supp. 493.

(2) Under a gift *inter vivos*:

*Tompkins v. Leary*, 134 App. Div. 14.

*Devlin v. Greenwich Bank*, 125 N. Y. 756; 26 N. E. 744.

*Matter of Lawrence*, N. Y. L. J., February 15, 1913.

*Matter of Loewi*, 75 Misc. 57; 134 Supp. 679.

(3) As a charitable corporation:

*Matter of Townsend*, 215 N. Y. 442.

The burden is on the Comptroller to show that a gift was made in contemplation of death.

*Matter of Ahrens*, N. Y. L. J., May 14, 1913.

*Matter of Palmer*, 117 App. Div. 360; 102 Supp. 326.

Where property is shown to have belonged to the deceased, the burden is on executors to show that it never came into their hands.

*Matter of Kennedy*, 113 App. Div. 4; 99 Supp. 72.

But upon the Comptroller to show that the estate is subject to the tax.

*Matter of Wadsworth*, 166 Supp. 716.

The policy of the law should, however, be one of encouragement to the State officers in their efforts to collect the tax and not one of repression.

*Matter of Green*, 184 App. Div. 376.

c. WITNESSES.

The witness must answer the question before the appraiser even though objected to. The materiality is for the Surrogate to determine.

*Matter of Bell*, 94 Misc. 552; 158 Supp. 142.

Opinion evidence by a witness duly qualified is competent as to value.

*Matter of Proctor*, 41 Misc. 79; 83 Supp. 643.

A party calling a witness to give his opinion on value may qualify him by showing his familiarity with the property and with other property in the neighborhood, his experience in the business, his familiarity with the state of the market and with sales of similar property in the vicinity, and any other facts tending to show his knowledge of the subject and capacity to give an opinion thereon.

*Hancock v. Ross*, 50 Cal. Dec. 15.

“The affidavit submitted to the appraiser was evidently prepared by the attorney for the executrix, and therefore the allegations therein contained are not entitled to the same probative force as the direct testimony of the deponent. When she testified before the appraiser her answers to the questions propounded to her were in her own words, the language was her own, and she evidently testified to the facts from her own knowledge and without the adventitious aid of counsel. As she was an interested witness the court will assume the correctness of the evidence that is least advantageous to her.”

*Matter of Thompson*, 85 Misc. 291; 147 Supp. 157; mod. 167 App. Div. 356; 153 Supp. 164; aff. 217 N. Y. 609.

“Upon the hearing before the appraiser of real estate experts were examined on behalf of the estate in order to show the value of decedent’s real property in this county. A real estate expert was also examined on behalf of the State Comptroller. There was a material difference between their estimates of the value of decedent’s real property. The appraiser adopted the valuation of the State Comptroller’s expert. An examination of the testimony shows that this valuation was not unreasonable or

unwarranted, and the Surrogate therefore will not interfere with the finding of the appraiser.”

*Matter of Turner*, 82 Misc. 25; 143 Supp. 692.

The report of a financial expert on the valuation of the assets of a partnership or corporation must be under oath.

*Matter of Newman*, 91 Misc. 200; 154 Supp. 1107.

*Matter of Chambers*, N. Y. L. J., January 31, 1912.

The affidavit of an executor as to the value of the real estate is competent before the appraiser as an admission against interest.

*Simon v. Etgen*, 213 N. Y. 589.

The executor of a nonresident decedent is not obliged to testify before the appraiser in reference to the decedent's property without this State, or as to stock of foreign corporations owned by the nonresident decedent.

*Matter of Bishop*, 82 App. Div. 112; 81 Supp. 474.

But if he so refuses the debts in a foreign jurisdiction cannot and therefore will not be prorated.

*Matter of Whiting*, 69 Misc. 526; 127 Supp. 960; aff. 200 N. Y. 520.

Where a witness refuses to answer a material question in reference to a gift to himself by the testator, he can be punished for contempt by the Surrogate.

*Matter of Kennedy*, 113 App. Div. 4-8; 99 Supp. 72.

The appraisal of the same real estate in another proceeding is not competent evidence of value.

*Matter of Mitchell*, N. Y. L. J., March 9, 1912.

#### d. PERSONAL TRANSACTIONS WITH DECEASED.

A residuary legatee, son of decedent, may testify to interviews had by him with the decedent tending to show that a particular legacy was given to him by the will in payment of a debt for services rendered by him to decedent.

*Matter of Gould*, 19 App. Div. 352; 46 Supp. 506; mod. 156 N. Y. 423.

A legatee is not prohibited from testifying before an appraiser as to interviews had by him with the decedent, and which tend to show why, or for what purpose a particular legacy was given to him by the decedent.

*Matter of White*, 116 App. Div. 183.

*Matter of Brundage*, 31 App. Div. 348-353; 52 Supp. 362.

In inheritance tax proceedings the testimony of a witness as to personal transactions with the deceased is not barred by Sec. 829 of the New York code.

*Matter of Gould*, 19 App. Div. 352; 46 Supp. 506; aff. as to this point, 156 N. Y. 423.

But when this is the only testimony it should be received with caution.

*Matter of Thompson*, 81 Misc. 86.

*Matter of Sharer*, 36 Misc. 502; 73 Supp. 1057.

#### e. CORPORATE BOOKS.

The appraiser may subpoena the production of corporate books as this is often the only way in which the value of the stock can be established where there were no sales in the open market.

*Matter of Crawford*, 85 Misc. 283; 147 Supp. 234.

*Matter of Bach*, 147 Supp. 229.

The Wisconsin statute did not specifically give this power and a writ of prohibition was granted, the court reasoning that a third party should not be compelled to produce private books and papers.

*State v. Carpenter*, 129 Wis. 180; 108 N. W. 641.

But the appraiser generally has power to compel their production.

*Re Mavis*, 14 Pa. Co. Ct. 171.

Books of account are competent to prove a claim against an estate in an inheritance tax case where the entries were made under the direction of the deceased.

*People v. Lefens*, 269 Ill. 472; 109 N. E. 965.

## f. OBJECTIONS.

Where no witnesses are examined and the appraisal is made upon the affidavits furnished by the estate the whole proceeding is informal and the ordinary rules of evidence do not apply. On the other hand where there is a controversy and testimony is adduced the proceeding assumes the form of a trial, with issues joined and facts to be determined. Even under these circumstances the hearing is still of an informal character.

“Evidence given before the appraiser on appraisals for tax purposes is generally informal in character and the Common Law rules of evidence appropriate on trials by jury are not strictly applied and, indeed, in legal theory, have but little application to such proceedings or inquisitions conducted by appraisers.”

*Matter of Hettie R. Green*, 99 Misc. 582; aff. 179 App. Div. 890.

“We think the error of the appraiser in rejecting the evidence ought not to be disregarded, although there was no formal exception taken to the exclusion of the evidence. This record comes to us on an appeal from all the proceedings, and not upon formal case and exceptions. It is a case where the court can see that the ruling may have been very prejudicial to the appellant, and we ought not, therefore, to say that an exception is indispensable to a review of the errors committed during the hearing before the appraiser.”

*Matter of Brundage*, 31 App. Div. 348; 52 Supp. 362.

But it is not safe for the practitioner to rely upon the leniency of the court and omit the ordinary precautions in taking objections and exceptions. The rules are being applied more and more strictly and particularly against the taxing power. It will be observed that in the cases cited the strict rules of evidence were modified in favor of the estate. This may be entirely proper; but the attor-

neys for the tax collector can look for no such assistance.

For example: Where the donor of stock has failed to affix stock transfer stamps at the time of the delivery of the gift no evidence of it can be received by the appraiser pursuant to Sec. 278 of the N. Y. Tax Law.

*Matter of Church*, 176 App. Div. 910.

*Matter of Ball*, 161 App. Div. 79; 146 Supp. 499.

*Matter of Paul*, 165 Supp. 413; aff. 181 App. Div. 932.

But if the evidence of the gift has been received by the appraiser without objection it is too late to move to strike it out on this ground when the matter comes before the Surrogate on appeal from the taxing order.

*Matter of Mills*, 172 App. Div. 530; 158 Supp. 1100; aff. 219 N. Y. 100.

*Matter of Cleveland*, 171 App. Div. 908; 155 Supp. 1098.

“No evidence of a gift or sale of stock, where the delivery of the certificate was made without the affixing of the required stamps at the time of the delivery, can be received. This results in making proof of such sale or gift impossible, whenever the defense that no stamp was affixed at the time of delivery of the certificate of stock is properly pleaded.”

*Matter of Raleigh*, 75 Misc. 55.

*Bean v. Flint*, 138 App. Div. 846; aff. 204 N. Y. 153; 97 N. E. 490.

*Mutual Life Insurance Co. v. Nicholas*, 144 N. Y. 95.

*Sheridan v. Tucker*, 145 N. Y. 145.

The duty to affix the stamps is on the donor and the failure does not affect the validity of the gift; it merely bars the proof of it before the appraiser. So on appeal from an order allowing discontinuance the court said:

“Had the duty to affix a transfer stamp to her father’s declarations of trust been on the infant plaintiff, more weight could be given to defendant’s argument that, despite her motion to discontinue, her suit should go on. But a gift of securities by a father to a child *non sui juris*



imposed on her no such duty. This was not only from her incapacity, but because the duty was laid on the person making the sale, transfer, or agreement (Tax Law, § 272), who was the father and plaintiff's natural guardian. Should such a trust fail in equity because of the father's omission to stamp the papers he had made? The State law declares a rule excluding the receipt in evidence of such unstamped transfer, but does not annul it.

“Strong grounds must be shown to move the judicial discretion to force an infant to carry on a litigation which is clearly against her interests to continue.”

*Ambrosius v. Ambrosius*, 167 App. Div. 244; 152 Supp. 562.

#### g. PROOF OF FOREIGN LAW.

In all matters pertaining to nonresident estates foreign laws and decisions must be proved before the appraiser like any other fact. In the absence of such proof it may be presumed that the law of the foreign state is the same as that of the state where the proceeding is held.

*Matter of Kennedy*, 20 Misc. 531; 46 Supp. 906.

*First National Bank v. Broadway National Bank*, 156 N. Y. 459; 51 N. E. 398.

*Electro Tint, Etc., Co. v. American Handkerchief Co.*, 130 App. Div. 564; 115 Supp. 34.

If the evidence of the foreign law consists of a single written document, statute or decision, its construction is for the court.

*Kline v. Baker*, 99 Mass. 253.

### 4. Report.

#### a. WHAT IT SHOULD CONTAIN.

The appraiser's report should have annexed thereto all the testimony and affidavits upon which it is based, a schedule of all the personal property and the value of each item and another list showing the real estate with a

brief description and the value thereof, less any mortgage incumbrances or other liens thereon, the amount of debts and testamentary expenses paid and the estimated commissions and additional expenses to be incurred in the settlement of the estate, the names and relationship of all legatees and distributees and the interest transferred to each respectively.

“Corporations claiming exemption should produce before the appraiser proofs which clearly entitle them thereto; a copy of the decedent’s will should be attached to the report and a summary statement, showing the aggregate net amount transferred, and the particular share thereof passing to each person or corporation. The date of decedent’s death and the names and addresses of the executors or administrators should be given.

“Where the mutually acknowledged relationship of parent and child is claimed to have existed between the decedent and a legatee, proof of such relationship should be produced by the executor or legatee by the affidavit or testimony of at least two disinterested persons who have lived in the neighborhood of the decedent and can testify as to such relationship, from personal conversation with the decedent and observations made during the period which would show that such relationship commenced at or before the child’s fifteenth birthday and was continuous for at least ten years thereafter, and, since June 1, 1905, that the parents of such legatee were dated at the time the relationship commenced, except in the case of a stepchild.

“If the value of any assets or part of the decedent’s estate cannot be presently determined, or where the appraiser is in doubt as to the immediate taxability of any interest transferred by the decedent’s will, the circumstances in connection therewith should be fully set forth in the report of the appraiser.

“The value of every future or limited estate, income, interest, annuity, or remainder, as determined by the superintendent of insurance, should be attached to each copy of the appraisers’ report before such report is filed.”

McElroy on the Transfer Tax Law, p. 403.

b. WHAT IT MUST SHOW.

“That which is to be reported by the appraiser is the value of the interest passing to the beneficiaries without any deduction for any purpose, or under any testamentary direction.”

*Matter of Swift*, 137 N. Y. 77-87; 32 N. E. 1096.

The report should be made clearly to express that it embraces all of the property which may be taxed at the date of the death of decedent.

*Matter of Earle*, 74 App. Div. 458; 77 Supp. 503.

It must show the ground of all findings.

*Matter of Bolton*, 35 Misc. 688; 72 Supp. 430.

And include all property as to which the appraiser is in doubt whether it is taxable.

*Matter of Hendricks*, 3 Supp. 281; 18 N. Y. St. Rep. 989.

It is insufficient if it shows that appraiser has appraised “All the property of the deceased made known to him by the executor.” Upon second proceedings it should clearly appear in the report that all of the property remaining of the estate is embraced within the proceedings.

*Matter of Earle*, 74 App. Div. 458; 77 Supp. 503.

c. WHERE TAXATION IS SUSPENDED.

Where claims are uncertain or doubtful the right to tax should be reserved in the report.

*Matter of Morgan*, 36 Misc. 753; 74 Supp. 478.

*Matter of Rice*, 56 App. Div. 253; 61 Supp. 911; 68 Supp. 1147.

*Matter of Dimon*, 82 App. Div. 107; 81 Supp. 428.

*Matter of Westurn*, 152 N. Y. 93; 46 N. E. 315.

But taxation should not be suspended unless it appears that decedent's interest can be determined more definitely in the future.

*Matter of Hubbard*, 103 Misc. 125; 169 Supp. 325.

The market value of a note should be determined by the appraiser and taxation should not be suspended because there is some difficulty in ascertaining it.

*Matter of Ottman*, 166 Supp. 1078.

If taxation is not suspended and the report purports to show that certain legacies are the only ones taxable and it is confirmed by the Surrogate the executor is protected from claim for taxes upon other legacies not included in the assessment.

*Matter of Wolfe*, 137 N. Y. 205; 33 N. E. 156.

Where an appraiser files a report by which he finds that the value of the interests of life beneficiaries could not then be ascertained and that the remaindermen were indefinite and uncertain and that for these reasons the tax could not then be determined, and such report is confirmed by an order from which no appeal is taken, such order is binding upon the Comptroller and the executor as long as the estate remains in the condition in which it was at the time the order was made.

*Matter of Lawrence*, 96 App. Div. 29; 88 Supp. 1028.

But where the value of the remainder interest was not ascertainable and the appraiser made no mention of it in his report, held not an adjudication that it was not taxable when its value was subsequently ascertained.

*Matter of Ely*, 157 App. Div. 658; 142 Supp. 714.

On the other hand it has been held that where the taxation of the remainder was not suspended and it could have been presently valued the decree was final in the

absence of appeal and no tax could subsequently be collected.

*Matter of Morss*, 85 Misc. 676; 149 Supp. 41.

*Matter of Crerar*, 86 App. Div. 479; 67 Supp. 975.

d. FORMS OF REPORT.

Following is an example of an appraiser's report in a recent case in New York City and County:

SURROGATE'S COURT,  
COUNTY OF NEW YORK.

---

In the Matter  
of  
The Appraisal, under the Transfer Tax  
Law, of the Estate of MARY HORLER,  
Deceased.

---

*To the Surrogate's Court of the County of New York:*

I, John J. Lyons, Transfer Tax Appraiser, having been designated by Hon. John P. Cohalan, one of the Surrogates of the County of New York, by an order duly made and entered on the 28th day of October, 1915, certified copy of which order is hereto annexed, together with a copy of the petition upon which same was granted, to appraise the estate of the above-named decedent, pursuant to the provisions of the Law relating to taxable transfers of property, and having given notice by mail of the time and place at which I would appraise said property to all the persons entitled thereto as provided in Section 230 of the General Tax Law as appears by copy of such notice and affidavit of mailing thereof hereunto annexed, and having held such appraisal on the 13th day of December, 1915, at the office of the Transfer Tax Appraisers in and for the County of New York, Room 3100, Woolworth Building, 233 Broadway, Borough of Manhattan, City of New York,

and having heard the allegations and proofs of the parties then and there appearing before me and offering the same, and having given due consideration to the affidavits and other papers submitted herein, and having made due and careful inquiry into all the matters and things brought before me in this proceeding, do now make and file the following report.

FIRST.—I report that the decedent herein died a resident of the State of New York on the 24th day of July, 1915, leaving a Last Will and Testament, copy of which is hereunto annexed, which was duly admitted to Probate in this Court on the 8th day of October, 1915, and that thereafter on the 9th day of October, 1915, Letters Testamentary upon the estate of the said decedent, were duly issued by this Court to James Horler, 17 West 10th Street, New York City, as executor.

SECOND.—I further report that the following appearances were noted by me at the appraisal herein: Hon. Lafayette B. Gleason, attorney for the State Comptroller. McReynolds & Hunter, Esqrs., attorneys for Executor, 80 Maiden Lane, New York City, N. Y.

THIRD.—I further report that I found the property left by the decedent herein or in which said decedent had any beneficial interest to consist of the items set forth in Schedule A of the affidavit for appraisal of James Horler hereunto annexed, and that the fair market value of each and every of the said items at the date of the decedent's death is the amount set down by me opposite such item in the column designated "Value as appraised in this proceeding" in said Schedule A.

FOURTH.—I further report that the sums properly to be allowed as deductions herein for funeral expenses, expenses of administration, debts of decedent, and so forth, are the amounts set down by me after the several

items claimed in the column designated “Allowed in this Proceeding” in Schedule B of said petition.

FIFTH.— I further report that I find the state and condition of the estate of said decedent at its fair market value as of the date of decedent’s death, the 24th day of July, 1915, and as appraised by me in this proceeding to be as shown in the following summary:

Real property in Schedule A1.....	\$3,250 00
Personal property in Schedule A2.....	6,016 00
Personal property in Schedule A3.....	28,449 63
Personal property in Schedule A4.....	0
Personal property in Schedule A5.....	0
Personal property in Schedule A6.....	0
Additional assets referred to in Paragraph 3 of this report .....	0
<hr/>	
Total Assets .....	\$37,715 63

(Exclusive of property passing under a Power of Appointment).

Subject to deductions as follows:

Funeral expenses,	B1.....	\$400
Administration expenses,	B2.....	100
Debts,	B3.....	0
Other deductions,	B4.....	0
Commissions .....		0
Total Deductions .....		\$500 00
Leaving a net estate of which decedent died possessed, of .....		37,215 63
To which is to be added the value of the prop- erty passing by virtue of the exercise of a power of appointment vested in said de- cedent, and set forth in Schedule C and		

therein appraised by me at the values written in after each item respectively in the column designated "Value as appraised in this proceeding," to wit:..... 0

---

Making the total of all property passing upon the death of decedent, of..... \$37,215 63

SIXTH.—I further report all the beneficiaries entitled at the time of decedent's death to an interest in this estate pursuant to the provisions of law, and of the said decedent's Last Will and Testament, the relationship of such persons to decedent, the amount of the share or interest of each, and whether such share or interest is taxable in this proceeding, to be as hereinafter set forth, all of said beneficiaries being of full age and sound mind except as otherwise designated.

Beneficiaries :		Amount of Interest Exempt	Amount of Interest Taxable
Elizabeth Bogert, daughter —			
Jewelry,	\$325		
Legacy,	5,000		
	<hr/>		
	\$5,325	\$5,000	\$325
James Horler, husband —			
1/2 interest in realty	3,250		
Residence	28,965.63		
	<hr/>		
	\$32,215.63	\$5,000	\$27,215.63

Respectfully submitted,

JOHN J. LYONS,

Appraiser.

Dated at New York City, N. Y., May 22, 1916.

To illustrate a more complicated case. In the *Matter of Hernandez*, 172 App. Div. 467; 159 Supp. 59; aff. 219 N. Y.



24, it was held that the decedent was a resident of Cuba at the time of his death, leaving a gross personal estate in New York of \$560,765.93 and the rest of his property in Cuba. It was also held that his widow, under the laws of Cuba, where they were married, was entitled to one-half of the “gananciales” or joint gains of the marriage. The value of the estate in New York was .33165 of the total estate. The total debts and funeral expenses amounted to \$253,254.77.

The supplemental appraiser’s report pro-rated the debts and ascertained and deducted the “gananciales” as follows:

Gross estate in New York.....	\$560,765.93
Less:	
Debts . . . . .	\$164,898.61
Funeral expenses . . . . .	4,070.03
Administration expenses . . . . .	50,089.59
Commissions . . . . .	34,196.54
	<hr/>
	\$253,254.77
Pro-rated at .33165 to	<hr/>
	83,991.94
Net estate in New York.....	\$476,773.99

According to the decision of the Surrogate that the widow of decedent is entitled in her own right to one-half the estate of decedent over and above the amount possessed by him at the time of his marriage, by virtue of the laws of the Kingdom of Spain existing and operative in Cuba at the time of the marriage of this decedent, said interest being known as the “gananciales” or joint gains, I find that there should be deducted from decedent’s taxable estate a proportionate sum to allow for the

effect of such right on the New York estate, and as I find said "gananciales" to be equal to .48095 of decedent's entire estate including realty and wheresoever situate, I hereby allow said proportion of the New York estate as a proper deduction in the sum of \$229,304.45

---

The net taxable estate situate within the State of New York being the sum of.....\$247,469.54

The rest of the report followed the form given in the first illustration.

### C.— PROCEEDINGS ON APPEAL.

#### 1. Jurisdiction of Probate Court.

##### a. EFFECT OF PROBATE DECREE.

The statutes of all the States found the jurisdiction as to the tax proceeding upon the jurisdiction to grant letters. But where one Surrogate has already assumed jurisdiction of a tax proceeding a Surrogate of another county is without jurisdiction, even though he has granted letters.

*Matter of Drake*, 94 Misc. 70; 157 Supp. 270.

But there must be jurisdiction of the parties or of the subject matter.

*Oakman v. Small*, 282 Ill. 360; 118 N. E. 775.

A decree granting letters of administration or admitting a will to probate is not conclusive as to the jurisdictional fact of residence.

*Tilt v. Kelsey*, 207 U. S. 43; 28 S. Ct. Rep. 1.

*Matter of Horton*, 217 N. Y. 363; 111 N. E. 1066.

In the *Horton* case the court said:

"If a probate court of another State otherwise has jurisdiction it may make a decree admitting a will to

probate which is binding upon nonresidents even though notice has by statute been dispensed with, and such probate becomes conclusive in the absence of contest within such period as is provided by the laws of that State. But the decision of the Ohio court as to the jurisdictional fact of residence was not conclusive.”

It has been held in New York that a decree admitting a will to probate, where the residence of the deceased was alleged as a jurisdictional fact in the petition, and so found by the decree, the finding could not be attacked collaterally in the New York courts.

*Bolton v. Shriever*, 135 N. Y. 65; 31 N. E. 1001.

*Flatauer v. Loser*, 211 N. Y. 16.

But, on the other hand, the New York courts are committed to the doctrine that, although the jurisdiction in the transfer tax proceeding is founded upon the jurisdiction in the probate proceeding, the decree of probate is not conclusive upon the Surrogate in the proceedings to fix the tax, as to the residence of the deceased, nor are the beneficiaries estopped from attacking it.

*Matter of Grant*, 83 Misc. 257; 144 Supp. 567; aff. 166 App. Div. 921; 151 Supp. 1119.

*Matter of Hernandez*, 172 App. Div. 467; 159 Supp. 59; aff. 219 N. Y. 24.

In the *Hernandez* case the will recited that deceased was a resident of New York County and the petition for its probate so alleged, also the petition for the appointment of an appraiser. But when the transfer tax proceedings were fairly under way the Cuban heirs alleged that the deceased was a resident of Cuba and were successful in establishing that contention. The Comptroller appealed on the theory that the probate decree was conclusive on the inheritance tax proceedings.

The Appellate Division in overruling his contention, reasoned thus:

“It is not a collateral action or proceeding in a separate court, but a part of the process of administration in the same court. I do not think therefore that the rule laid down in the two cases applies (the *Bolton* and *Flatauer* cases, *supra*). It seems to me that it comes rather within the reasoning of *Matter of Patterson*, 146 N. Y. 327; 40 N. E. 990; where letters of administration upon the estate of a decedent had been granted to her surviving husband upon his petition asserting that relationship without notice to the next of kin or any appearances by them, and where, at a later period he filed his account and the same was settled by the Surrogate awarding payment of the whole surplus to him as a husband. Thereafter the next of kin filed a petition alleging that he was never in fact married to the defendant but had obtained the estate by fraud and asked to have the decree on the accounting and former distribution set aside and that the assets in the hands of the administrator be paid over by him to the next of kin. The appellant contended that as the next of kin claimed under and in affirmance of the order appointing Patterson administrator they could not at the same time attack it collaterally. But the court held that they did not attack that order at all but, recognizing the authority of Patterson as administrator, they ask that he, as lawful administrator, make an honest and lawful distribution. The order appointing the administrator might stand consistently with the relief asked. It is true that in that case the next of kin had not been cited upon the appointment of Patterson, but the position there taken seems to me in line with that taken by the respondents herein, which is, that conceding the jurisdiction of the Surrogate’s Court to admit the will to probate because decedent had property here at the time of his death they have the right to show the amount of such

property and the extent of its taxability as decedent was a resident of Cuba and not of the State of New York. Furthermore, the State of New York was not a party to the proceeding for the probate of the decedent's will. In the cases relied on by appellant the question of estoppel arose between those who had either been parties to the original decree or privies of such parties."

b. DECREE OF DISTRIBUTION.

A final decree of distribution after claims for creditors have been advertised bars a tax proceeding in another State under the "full faith and credit" clause of the United States Constitution.

*Tilt v. Kelsey*, 207 U. S. 43; 28 S. Ct. Rep. 1.

But it does not relieve the executor or beneficiary of his personal liability, as the State is in no way a party to the proceedings.

*Attorney General v. Stone*, 209 Mass. 186; 95 N. E. 395.

*Attorney General v. Rafferty*, 209 Mass. 321; 95 N. E. 747.

The court said in the *Stone* case:

"The defendant's liability could not be affected or destroyed by the action of the Probate Court upon the accounts of the administrator or of the trustee. *Estate of Lander's*, 6 Cal. App. 744; 93 Pac. 202. That action could not operate collaterally to bar the remedy now sought for. Neither the second nor the final account of the trustee was allowed until after the statute before us had taken effect. If the administrator did not comply with the statute in force when he filed his final account, this failure merely left the succession tax upon the residue of the estate unpaid, and so brought it within the operation of the statute of 1902. The Commonwealth was not a party to any of these accounts, nor was it made so by the publication of notice."

So it was held that the listing of bonds of a foreign corporation temporarily within the State in the inventory filed for ancillary administration and the decree of distribution thereon are not conclusive as to the facts which entitle the State to demand the tax upon appeal from an order fixing said tax.

*Estate of McCahill*, 171 Cal. 482; 153 Pac. 930.

In a proceeding in equity to obtain distribution the court may require payment of the tax before distribution although the Probate Court is given special authority over matters of taxation.

Kentucky St. 1906, c. 22, ss. 13, 14, 15, confer jurisdiction on the County Court to determine questions arising in relation to the tax, but this jurisdiction is not exclusive when the jurisdiction of the court of equity is invoked to distribute an estate and the interest of each or any number of the heirs at law is subject to the inheritance or other tax. The court at the instance of the official representative of the commonwealth charged with the duty of collecting such tax may require its payment out of the share or shares of those chargeable with the tax before distributing the estate or funds among them, and thereby save both the tax collector and the heirs the trouble and expense of a separate and independent proceeding in the County Court to compel the payment of the tax. The Circuit Court, therefore, in requiring the payment of the tax before distribution did not exceed its jurisdiction."

*Barret v. Continental Realty Co.*, 130 Ky. 109; 114 S. W. 750.

#### c. JURISDICTION OF THE TAX PROCEEDINGS.

The court granting letters of administration, letters testamentary or ancillary letters universally has jurisdiction of the inheritance tax proceedings; but it is not necessary in case of a nonresident that ancillary letters

should actually have been issued. If there is property of decedent within the county, so that the court would have jurisdiction to issue such letters, it is sufficient.

*Matter of Fitch*, 160 N. Y. 87; 54 N. E. 701.

The court said: “The jurisdiction of the court is determined by the answer to the question: Had the court power to issue letters?”

The Surrogate of the county in which donee of a power of appointment resided has exclusive jurisdiction.

*Matter of Seaver*, 63 App. Div. 823; 71 Supp. 544.

Or, in case the donee was a nonresident, the Surrogate of the county where the real estate over which the power is exercised is situated.

*Matter of Lowndes*, 60 Misc. 506; 113 Supp. 1114.

Where personal property of a nonresident is located within the county its Surrogate has jurisdiction in transfer tax proceedings although the said decedent owned real estate in another county.

*Matter of Arnold*, 114 App. Div. 244; 99 Supp. 740.

But when letters have been issued the inheritance tax proceedings should be brought before the same court.

*Matter of Arnold*, 114 App. Div. 244; 99 Supp. 740.

So, where ancillary letters had been issued in Chemung County an order appointing an appraiser in New York County was vacated.

*Matter of Hathaway*, 27 Misc. 474.

## **2. Assessment of the Tax.**

### **a. THE JUDGE ACTS AS TAXING OFFICER.**

Although the statutes almost universally impose the duty of assessing the tax upon the judge of the court in which the estate is administered, the provisions have been

attacked as unconstitutional in imposing ministerial or clerical functions upon a judicial officer,—but this objection has nowhere been sustained.

As the court said in *Union Trust Co. v. Probate Judge*, 125 Mich. 487; 84 N. W. 1101, at page 494: “These duties are necessarily incident to the settlement of estates and may be performed by the probate judge.”

So it was held in Wisconsin that it is the law, not the court, that fixed the tax, but that the court “As an incident to the settlement of estates simply determines, in a judicial way, certain facts necessary to be ascertained to determine how much the tax fixed by law amounts to in a given case. These duties seem to us as judicial in their character, and very properly entrusted to the County Court in which the estate is being administered.”

*Nunnemacher v. State*, 129 Wis. 190, 223; 108 N. W. 627.

Surrogate Fowler of New York County refused to fix the maximum and minimum amounts under the New York statute in regard to the immediate taxation of contingent remainders on the ground that such mathematical details were for the convenience of the Comptroller, were purely ministerial, and could not constitutionally be imposed upon a judge of a court of record. His opinion was long and learned but he was mistaken in the law and was reversed by the Appellate Division.

The court said:

“It is this latter determination which the learned Surrogate has been asked and has refused to make. He has couched his refusal in a very vigorous and positive opinion in which he has undertaken to demonstrate at some length that the Surrogate, now that his court has been made a constitutional court and a court of record, is a judicial officer and that it is beyond the power of the



Legislature itself to impose upon a judicial officer the performance of purely ministerial and non-judicial duties such as he considers that the State Comptroller asks him to perform \* \* \*. It needed much less argument and citation of authorities than has been expended upon the subject to prove that the Surrogate is a judicial officer and that, as such, no duties can be lawfully imposed upon him except those of a judicial nature. We do not agree, however, that the determination which the Surrogate has been asked to make is wholly unjudicial in its character or that it is one which cannot be made by a court of record established by the Constitution without a surrender of its dignity. It is certainly no more so than is the act of the Surrogate in fixing the amount of the tax chargeable upon a contingent remainder at the highest rate possible under the provisions of the will although both involve incidentally the making of a mathematical calculation. \* \* \* We find ourselves unable fully to appreciate the suggestion of the learned Surrogate that the determination he is asked to make is solely for the benefit of the State Comptroller. It is at least as much for the benefit of the trust beneficiaries in consideration for whom the present act was passed and above all it is for the benefit of the due and orderly administration of justice which requires that questions which may give rise to differences and litigation should, when possible be avoided by apt and proper judicial action."

*Matter of Spingarn*, 175 App. Div. 806; 162 Supp. 695.

#### b. THE TAXING ORDER.

Under the New York practice the Surrogate enters the decree fixing the tax "as of course" and if either party is dissatisfied an appeal lies to the Surrogate himself. Although this appeal is anomalous in form it works out in practice satisfactorily for the taxing order is really

drawn by the appraiser or the attorneys and approved by the court "*pro forma*."

*Weston v. Goodrich*, 86 Hun, 194; 33 Supp. 382.

The phrase "as of course" relates to the practice rather than to the law in reference to the entry of the order determining the amount of tax, and means that when the report of the appraiser is filed the Surrogate is to proceed with the entry of the order without the intervention of any one.

*Matter of Fuller*, 62 App. Div. 428-432; 71 Supp. 40.

Assuming that a Surrogate, in fixing a transfer tax and making the decree assessing it, does not act as Surrogate, but simply as a taxing officer, yet the decree upon the taxation, becomes a decree or order of his court.

*Matter of Scrimgeour*, 80 App. Div. 388; 80 Supp. 636; aff. 175 N. Y. 507; 67 N. E. 1089.

A Surrogate in assessing a transfer tax acts judicially and not ministerially. It is true that the power of taxation is one which belongs to the legislative department, and it is equally true that some of the functions of a taxing officer are ministerial, but it is well established by authority, that in determining the value of property assessed, the extent of claims by exemption, etc., the taxing officer or board acts judicially.

*Matter of Hull*, 109 App. Div. 248; 95 Supp. 819.

### c. REPORT MAY BE REMITTED TO APPRAISER.

The Surrogate may, of his own motion, or as a result of the appeal from the *pro forma* taxing order remit the report to the appraiser either before or after entering the order thereon.

*Matter of Lansing*, 31 Misc. 148; 64 Supp. 1125.

*Matter of Kelly*, 29 Misc. 169; 60 Supp. 1005.

He may require the correction of mistakes or the taking of further evidence.

*Matter of Baker*, 38 Misc. 151; 77 Supp. 170.

*Matter of Frolich*, N. Y. L. J., April 30, 1913.

*Matter of Loster*, N. Y. L. J., July 29, 1913.

And this may be done on motion after the time to appeal has expired on proper cause shown.

*Matter of Head*, N. Y. L. J., December 22, 1911.

See *post*, Motions to Modify Decree, p. 508.

If there is evidence to sustain the finding of the appraiser and such finding is not clearly against the weight of evidence it will not be disturbed by the Surrogate on appeal from the *pro forma* taxing order. So, where the assessed value of the real estate was \$58,000, the evidence submitted for the estate valued it at \$61,000 and that produced on behalf of the Comptroller that it was worth \$70,000 an appraisal of \$68,000 was sustained.

*Matter of M. A. Valentine*, N. Y. L. J., June 22, 1915.

But the Surrogate cannot assess the tax upon mere guess and the record before him must show the facts or it will be sent back for additional proof.

*Matter of Wunsch*, N. Y. L. J., January 24, 1913.

*Matter of Dudley*, N. Y. L. J., March 4, 1913.

*Matter of De Wollf*, N. Y. L. J., February 24, 1913.

Such order is not appealable.

*Matter of Astor*, 137 App. Div. 922; 122 Supp. 1121.

Nor has the Supreme Court power to vacate such an order.

*Matter of Smith*, 40 App. Div. 480; 58 Supp. 128.

#### d. FORMS OF TAXING ORDER.

##### (1) *Where There Are No Contingent Remainders.*

These are comparatively simple and a sample is given without further comment.

**Order Fixing Tax.**

At a Surrogate's Court held in and for the  
County of New York at the Hall of Records  
in the Borough of Manhattan, City of New  
York, on the 6th day of June, 1916.

Present — Hon. JOHN P. COHALAN, *Surrogate*.

In the Matter of The Transfer Tax upon the Estate of MARY HORLER, Deceased.	}
---	---

Upon reading the report of the appraiser, John J. Lyons, Esq., duly filed herein on the 24th day of May, 1916, wherein it appears that said decedent died on the 24th day of July, 1915, and upon motion of Lafayette B. Gleason, attorney for the State Comptroller,

IT IS ORDERED AND ADJUDGED that the cash value of the property referred to in said report, the transfer of which is subject to the tax imposed by the act in relation to taxable transfers of property and the tax to which said transfers are liable is as follows:

Beneficiary	Amount Received	Amount of Exemption	Amount Taxable	Tax Assessed
Elizabeth Bogart, Daughter,	\$5,325	\$5,000	\$325	\$3.25
James Horler, Husband,	32,215.63	5,000	27,215.63	272.16

JOHN P. COHALAN,  
Surrogate.

(2) *Present Taxation of Contingent Remainders.*

The statute at first provided that the tax should be assessed against such remaindermen as a class at the

highest possible rate with provisions for a refund in case a less amount proved to be due and Surrogate Fowler of New York County thus interpreted the provision in *Matter of Simmons*, N. Y. Law Journal, June 14, 1912:

“As section 230 of the Tax Law was not changed by the amendment of 1910, it must be presumed that the Legislature intended that the provisions of that section should apply to the assessment of tax under the new rates. Where, therefore, a remainder is contingent, but is limited to beneficiaries of the 1% primary rates, it must be taxed as if it passed to a single individual of that class; if it may pass to beneficiaries in the classification of the 5% primary rate, it must be assessed as if it passed to a single individual in that class.

“The remainder after the life estate of decedent’s widow should be taxed as follows: Mabel S. Tilden, daughter, surviving life estate in the sum of \$250,000; remainder after said life estate to be assessed against the trustees and taxed at the 5% rate. All the rest and residue of the remainder should be assessed against the trustees for Joseph F. Simmons, son, at the rate of 1%. The order submitted upon the appraiser’s report may contain a provision that, upon the vesting in possession of any of the remainders, or the exercise of any of the powers of appointment given by decedent’s will, an application may be made to modify the order fixing tax in accordance with the actual devolution of the property.”

In practice this proved a hardship as money was diverted from trust estates which would in all probability never reach the treasury and in 1911 the act (Sec. 241) was amended to provide for a temporary taxing order which should show the difference between the highest rate and that which would be due if the remainder fell in at once. This difference is deposited and interest paid to the

trustees while the rest goes to the state treasury as part of the current revenues.

*Matter of Billingsley*, 1 State Dept. Rep. 569.

Or securities may be deposited in lieu of cash.

*Matter of Leuff*, 1 State Dept. Rep. 567.

The practice was thus explained in an opinion by the State Comptroller in *Matter of Everett*, 3 State Department Reports, 450:

“To comply with this provision the taxing order should first extend the tax on the remainders as they would be taxable if they had actually vested in possession on the day of the appraisal, and this statement should be followed by the extension of the tax at the highest rate on which there is any possibility of the remainders ultimately vesting; and the difference between the tax at the highest rate and the other tax as shown to be due in the event of the remainders having vested at the date of the appraisal would be the amount the Comptroller should retain and pay the income thereon to the executors of the estate until the remainders ultimately vested. There is a remainder to nieces in case of the death of all the children without issue.”

It was this form of order that was approved by the Appellate Division in *Matter of Spingarn*, 175 App. Div. 806; 162 Supp. 695; after Surrogate Fowler had refused to sign it, that learned jurist contending that the form in *Matter of Simmons*, *supra*, and in *Matter of Valentine*, 88 Misc. 397; 150 Supp. 733, was in accordance with the statute and all that a judicial officer should be asked to do.

To understand the problem we must take an illustrative case, slightly changed as to names and facts.

Assume Testatrix left her surviving four children, Marie, Joseph, Ann, Julia, and a husband, Jean Baptiste. To Marie, Joseph and Ann she made bequests of \$10,000, \$15,000 and \$20,000, respectively, and then gave a life estate in

the residue to her husband, Jean. Upon his death the said residue was to be divided among such children as should then be living, and in the event of the prior death of any or all of said children, without issue them surviving, then the remainder was to go to nieces. The fourth child, Julia, is given no specific bequest, but shares equally in the remainder with the other children upon the death of the husband. The residuary estate is appraised at \$782,570, and the husband's life use is calculated by the Insurance Department and valued at \$215,910.

The taxing order in this supposed case, which is slightly altered from an actual case, would, under the bequests assumed, and pursuant to the rulings of the State Comptroller as herein set forth, be as follows:

At a Surrogate's Court held in and  
for the County of New York at the  
Hall of Records, in the Borough of  
Manhattan, City of New York, on the  
11th day of June, 1917.

Present: — HON. JOHN P. COHALAN, Surrogate.

In the Matter of the Transfer Tax Upon the Estate of MARY ANN BAPTISTE, Deceased.	{
---	---

Upon reading the report of the appraiser, .....  
....., Esq., duly filed herein on the 10th day of  
June, 1917, wherein it appears that said decedent died on  
the 18th day of January, 1917, and upon motion of Lafayette  
B. Gleason, Attorney for the State Comptroller,

IT IS ORDERED AND ADJUDGED, That the cash value of the  
property referred to in said report, the transfer of which is

subject to the tax imposed by the act in relation to taxable transfers of property and the tax to which said transfers are liable is as follows:

Beneficiary.	Amount Received	Amount of Exemption	Amount Taxable	Tax Assessed
Jean Baptiste ...	\$215,910.00	\$5,000.00	\$210,910.00	\$5,186.40
Marie Baptiste ..	10,000.00	5,000.00	5,000.00	50.00
Joseph Baptiste .	15,000.00	5,000.00	10,000.00	100.00
Ann Baptiste ...	20,000.00		15,000.00	150.00
Executors for benefit of 5% class . . . . .	566,660.00		0 566,660.00	42,082.80

And it is further

ORDERED AND ADJUDGED, That of the tax above assessed against the Executors and Trustees for the benefit of the five per cent (5%) class, the tax upon such remainder or remainders which would be due if the contingencies or conditions had happened at the date of the appraisal of the estate it as if the same vested as follows:

Beneficiary.	Amt. Rec'd	Amt. of Exemption.	Amt. Taxable.	Tax Assessed.
Marie Baptiste ..	\$141,665.00	0	\$141,665.00	\$3,099.95
Joseph Baptiste .	141,665.00	0	141,665.00	3,199.95
Ann Baptiste ....	141,665.00	0	141,665.00	3,299.95
Julia Baptiste ...	141,665.00	\$5,000.00	136,665.00	2,849.95

The tax on the remainder of \$566,660.00 is computed as follows:

\$25,000 at 5% .....	\$1,250.00
75,000 at 6% .....	4,500.00
100,000 at 7% .....	7,000.00
366,660 at 8% .....	29,332.80
making a total tax of	\$42,082.80.

If the life tenant were dead at the date of the appraisal,



the tax on the remainder interests would be as set forth in the Order, amounting to a total of \$12,449.80.

The Comptroller deducts this from the total tax on the residue and turns it into the treasury as part of the revenue for the current year from inheritance taxation. The balance, or \$29,633.00, in cash or securities, is deposited, and the interest paid to the trustees, until the termination of the life estate, when the amount will be returned to the estate unless it proves taxable at the 5% rate.

For recent cases involving taxation of contingent remainders at maximum and minimum rates, see:

*Matter of Zborowski*, 213 N. Y. 109.

*Matter of Hutton*, 176 App. Div. 217; 160 Supp. 223; aff. 220 N. Y. 770.

*Matter of Shearson*, 174 App. Div. 866; aff. 220 N. Y. 584.

*Matter of Steinwender*, 172 App. Div. 871; 158 Supp. 779; aff. 221 N. Y. 611.

*People v. Starring*, 274 Ill. 289; 113 N. E. 627.

#### e. EFFECT OF DECREE ASSESSING TAX.

If there is no appeal the *pro forma* order fixing tax is the final termination of the tax proceeding and is final and conclusive on all questions of law and fact litigated before the Surrogate of which he had jurisdiction.

*Matter of Lansing*, 31 Misc. 148; 64 Supp. 1125.

*Matter of Crerar*, 56 App. Div. 479; 67 Supp. 795.

*Matter of Schermerhorn*, 38 App. Div. 350; 57 Supp. 26.

*Matter of Rice*, 56 App. Div. 253; 61 Supp. 911; 68 Supp. 1147.

If there is evidence to sustain the findings of fact, they will generally be sustained on appeal in the absence of manifest error.

*Smith's Estate* (Pa.), 104 A. 492.

*McDougald v. Wulzen*, 34 Cal. App. 21; 166 Pac. 1033.

Payment of the tax does not estop an appeal by one paying it nor does the issuance of a receipt prevent an appeal by the Comptroller.

*Matter of Bogert*, 25 Misc. 466; 55 Supp. 751.

A decree of a Surrogate in a transfer tax proceeding is binding only on questions of taxation, and any finding made by the appraiser as to the validity of an alleged indebtedness of decedent to his executrix will not prevent the bringing of an action by legatees to determine the validity of such indebtedness.

*Matter of Crawford*, 85 Misc. 283; 147 Supp. 234.

In proceedings under the Inheritance Tax Act, the determination of the Surrogate that a certain amount of property passed to a residuary legatee is binding upon the question of taxation only, and is not conclusive upon the rights of parties arising out of the will.

*Amherst College v. Ritch*, 151 N. Y. 282; 45 N. E. 876.

Where a former report of an appraiser determines the value of certain remainder interests which are held not presently taxable, such determination and order of the Surrogate entered thereon are no bar to a subsequent proceeding to determine the value of the remainders upon the death of the life tenant, "without diminution for or on account of any valuation theretofore made of the particular estates for the purposes of taxation."

*Matter of Irwin*, 36 Misc. 277; 73 Supp. 415.

*Matter of Mason*, 120 App. Div. 738; 105 Supp. 667; aff. sub nom.

*Matter of Naylor*, 189 N. Y. 556; 82 N. E. 1129.

But the appraiser's report and the taxing order should suspend from taxation specifically such matters as are reserved. The order is final and conclusive as to all questions raised before the appraiser and is presumed to cover all assets found to be taxable.

*Matter of Wolfe*, 137 N. Y. 205; 33 N. E. 156.

*Matter of Mowry*, 114 App. Div. 904; 100 Supp. 1131.

*Matter of Connolly*, 38 Misc. 466; 77 Supp. 1032.

### 3. Appeal to the Surrogate.

#### a. NOTICE OF APPEAL.

Under the New York practice an appeal lies from the *pro forma* order to the Surrogate by the party aggrieved, by filing a notice of appeal within sixty days of the entry of the order stating the grounds upon which the appeal is taken.

In New York county it is usually heard on briefs without oral argument except where the Surrogate desires it, and it has been held that an extension of time to file briefs must be granted by the court and not merely on stipulation of attorneys.

*Matter of Linley*, N. Y. L. J., February 19, 1914.

When the notice of appeal fails to state the grounds it is dismissed.

*Matter of Stone*, 56 Misc. 247; 107 Supp. 385.

*Matter of Tracy*, 86 Supp. 1024.

Where the statute requires the grounds of the appeal to be stated, none except those specified can be considered.

*Matter of Davis*, 149 N. Y. 539-548; 44 N. E. 185.

The review by the Surrogate on an appeal to him is limited to the items specified in the notice of appeal.

*Matter of Wormser*, 51 App. Div. 441; 64 Supp. 897.

*Matter of Reynolds*, 97 Misc. 555; 163 Supp. 803.

The purpose of requiring the notice of appeal to the Surrogate to state the grounds the appeal is made upon was to limit the questions to be reviewed by him to those only stated in the notice, and neither the Supreme Court nor the Court of Appeals can review any question except that reviewed by the Surrogate.

*Matter of Manning*, 169 N. Y. 449-452; 62 N. E. 565.

This rule was emphasized by the Appellate Division in

the recent case of *Matter of Rockefeller*, 177 App. Div. 786; 165 Supp. 154, when the court said:

“On the hearing of the appeal before the Surrogate the fact of the payment of these sums by the Executors to the various beneficiaries was stipulated. Objection to the reception of the fact was made by the State Comptroller. The Comptroller offered certain evidence to which objection was made by the attorneys for the executors and the Surrogate expressed doubt as to his power to consider the evidence, upon the ground that it was no part of the record before the appraiser.

“In our opinion he did not have power to consider the evidence. The statute requires the notice of appeal ‘shall state the grounds upon which the appeal is taken’ (Tax Law, § 232, derived from Laws 1892, ch. 397, § 13), and none but those specified can be considered. (*Matter of Davis*, 149 N. Y. 539, 548; 44 N. E. 185; *Matter of Manning*, 169 id. 449, 451; 62 N. E. 565.) In the event of new facts arising after the notice of appeal was filed it has been held that ‘the statute might be construed so as to permit the raising upon an appeal, of a question which did not enter into the original determination and was first made known after the appeal had been taken.’ (*Matter of Westurn*, 152 N. Y. 93, 104; 46 N. E. 315.) We will not, therefore, consider the very interesting questions discussed in the brief of the appellant, that until payment was actually made by the executors to the beneficiaries, the property either passed to the next of kin subject to be divested by the exercise of the power, or that it remains in the trustee and is subject to the tax. These questions were not raised before the appraiser and are not specified in the notice of appeal. If the questions had been raised before the appraiser, the fact of payment could have been proved.”

## b. FORM OF NOTICE.

By way of illustration the following is given as an example of a notice of appeal to the Surrogate from his *pro forma* order fixing the tax:

**Notice of Appeal to the Surrogate by Executor.**

## SURROGATE'S COURT,

COUNTY OF NEW YORK.

In the Matter	}
of	
The Transfer Tax upon the Estate of	
MARY HORLER,	
Deceased.	

Sirs:

PLEASE TAKE NOTICE that James Horler, individually and as executor of the Last Will and Testament of Mary Horler, deceased, is dissatisfied with the appraisal herein of the property of the said Mary Horler, deceased, and hereby objects to the report of the appraiser filed herein on the 22nd day of May, 1916, and to the order or decree made herein, fixing, assessing and determining the Transfer Tax in respect of the property of the said decedent, and entered herein on the 6th day of June, 1916, and hereby appeals to the Surrogate from said appraisal and said assessment and determination of said tax, and from said order or decree.

The grounds upon which said appeal is taken are:

1. That the tax of \$3.25 imposed upon the sum of \$5,325 less an exemption of \$5,000, stated in the order as the amount received by Eliza Bogert as beneficiary, was unlawful and illegal; because the affidavit of James Horler and schedules thereto attached upon which the appraisal was made show that the value of the estate of Mary Horler did

not exceed the sum of \$325, the said Mary Horler having been the owner with James Horler, the executor, at her death, of certain other property described in such schedules, which they held as joint tenants, and to which at her death the said James Horler became entitled as survivor, and there did not therefore pass to Eliza Bogert by the death of Mary Horler any property of the value of \$5,325.

2. That the value of the transfer passing to Eliza Bogert upon and by the death of Mary Horler, did not exceed the sum of \$325.00, and that such transfer is not therefore taxable, under the provisions of the tax law of the State of New York relating to taxable transfers.

3. That the tax of \$272.16 imposed upon the sum of \$32,215.63 less an exemption of \$5,000, stated in the order as the amount received by James Horler as beneficiary, was and is unlawful and illegal because:

(a) The Taxable Transfer Act of the State of New York as amended by the laws of 1915, chapter 664, section 2, which amendment went into effect May 20, 1915, under which act as so amended said tax was imposed, in so far as Section 220, subdivision 7 thereof, imposed a tax upon the right of the surviving tenant by the entirety, joint tenant or joint tenants to the immediate ownership or possession and enjoyment of intangible property held in the joint names of two or more persons prior to the 20th day of May, 1915, the date of taking effect of such amendment, under a valid contract made for a valuable consideration, is unconstitutional and void, as impairing the obligation of contracts and as taking property without due process of law and as denying to certain persons within the jurisdiction of the State of New York the equal protection of the laws, and as being an *ex post facto* law, and as abridging the privileges and immunities of citizens of the United States, contrary to and in violation of Article 1, Section 10, of the Constitu-

tion of the United States, and Article 1, Section 6, of the Constitution of the State of New York, and contrary to and in violation of the 14th Amendment of the Constitution of the United States.

(b) The property taxed by said order as having been received by James Horler as beneficiary was property held by him and the above named decedent Mary Horler at her death as joint tenants under written instruments and under contracts made by them for a valuable consideration prior to May 20, 1915, and under the laws of the State of New York as in force at the time of the making, execution and delivery of such instruments and at the time of the making of said contracts the property affected by such instruments and such contracts and the transfer thereof was not subject to or liable for the payment of a transfer tax upon the death of either of said parties, the rights of the said James Horler and Mary Horler in such property became fixed and vested prior to May 20, 1915, and the tax placed upon the said property and the transfer thereof was and is therefore contrary to and in violation of Article 1, Section 10, of the Constitution of the United States, and Article 1, Section 6, of the Constitution of the State of New York, and in violation of the 14th Amendment of the Constitution of the United States.

4. That the tax of \$272.16 imposed upon the sum of \$32,215.63 less an exemption of \$5,000 stated in said order as the amount received by James Horler as beneficiary was and is unlawful and illegal, because at her death Mary Horler and James Horler were seized and possessed of the property making up said sum of \$32,215.63 as joint tenants, each of them owning an undivided one-half interest in such property, and there was therefore only transferred from Mary Horler to James Horler by her death an undivided one-half of such property; and if any part of

said property is taxable only the said half thereof should be taxed which was so transferred to James Horler by the death of the above named decedent Mary Horler.

5. That it was and is erroneous and unlawful to include in the items going to make up the net estate of Mary Horler, deceased, one-half of the market value of the real estate mentioned and described in Schedule A of the affidavit of the Executor herein, because said real estate at her death formed no part of her estate but was held at her death by James Horler and herself as joint tenants and upon her death James became entitled to the said real estate as survivor, and the transfer to James Horler as such survivor was not and is not a taxable transfer under the Taxable Transfer Act of the State of New York.

Dated, New York, July . . . , 1916.

McREYNOLDS & HUNTER,  
Attorneys for James Horler indi-  
vidually and as Executor of  
Mary Horler, deceased.

Office and P. O. Address,

80 Maiden Lane,  
Manhattan Borough,  
New York City.

To:

LAFAYETTE B. GLEASON,  
Attorney for State Comptroller,  
DANIEL J. DOWDNEY,  
Clerk of the Surrogate's Court  
of the County of New York.

#### 4. Determination by Surrogate.

##### a. HEARINGS ON APPEAL.

It is not the practice to appoint a special guardian for an infant.

*Matter of Post*, 5 App. Div. 113; 38 Supp. 977.



Although the review on appeal is confined to the questions raised by the notice, on those questions the Surrogate may take evidence to supplement that taken before the appraiser.

*Matter of Fuller*, 62 App. Div. 428; 71 Supp. 40.

*Matter of Gibbs*, 60 Misc. 645; 113 Supp. 939.

*Matter of Bentley*, 31 Misc. 656; 66 Supp. 95.

*Matter of Thompson*, 57 App. Div. 317; 68 Supp. 18.

In the *Thompson* case the court said:

“The whole matter is with the Surrogate and continues with him until the final determination after appeal. The purpose of the appeal from the Surrogate to the Surrogate is not simply to review his former determination. There is no occasion to limit it to that. The beneficial result of such a rehearing would be greatly diminished if the determination of the Surrogate could not at that time be treated as so far open as to admit new testimony.”

The Comptroller is not estopped from appealing by accepting payment of so much of the tax as is conceded to be due.

*Matter of Schumacher*, N. Y. L. J., March 13, 1914.

In order to justify a reversal by the Surrogate there must be a preponderance of evidence one way or the other.

*Matter of Gilsey*, N. Y. L. J., March 10, 1914.

Where reappraisal is sought on appeal the papers must show some ground therefor. Where they failed so to do the Surrogate said: “There is nowhere contained in appellant’s papers a specific fact, or statement of any person competent to judge that this stock is worth one dollar more than the sum for which it has been appraised.”

*Matter of Johnson*, 37 Misc. 542; 75 Supp. 1046.

Discovery of new facts must be shown to entitle the Comptroller to order appointing appraiser to tax assets

the valuation of which in a previous appraisal had been suspended.

*Matter of De Sala*, N. Y. L. J., July 20, 1912.

As to new facts discovered since the hearing before the appraiser the Surrogate may take evidence even though they were not specified in the notice of appeal:

“We think the statute ought to be construed so as to permit the raising upon appeal, of a question which did not enter into the original determination, and which was first made known after the appeal had been taken, and after the expiration of the sixty days. The Surrogate had jurisdiction of the appeal by the notice actually given, and it would be an unwise construction of the act to limit the hearing so as to exclude the consideration of a new question subsequently arising, on the ground that it was not specified in the notice of appeal.”

*Matter of Westurn*, 152 N. Y. 93, 104; 46 N. E. 315.

But this is confined strictly to newly discovered evidence. It does not apply when the testimony might just as well have been put in before the appraiser.

*Matter of Rockefeller*, 177 App. Div. 786; 165 Supp. 154.

Nor to objections that might have been taken before him.

*Matter of Mills*, 172 App. Div. 530; 158 Supp. 1100; aff. 219 N. Y. 100.

#### b. ON MOTIONS TO EXEMPT.

As we have seen, a question as to inheritance taxation may be raised on a motion to exempt the estate from taxation, without the appointment of an appraiser.

Where such a motion is made on the ground of non-residence the Surrogate may take proofs of the facts or send to a referee although the moving affidavits are uncontradicted.

*Matter of Hyde*, 218 N. Y. 55.

*Matter of Bishop*, 111 App. Div. 545; 97 Supp. 1098; appeal dismissed, 188 N. Y. 635.

But where an appraiser has been appointed and a tax has been imposed the proper remedy is by appeal and not by motion to exempt.

*Matter of Cowie*, 49 App. Div. 612; 63 Supp. 608.

*Matter of Barnum*, 129 App. Div. 418; 114 Supp. 33.

*Matter of Lowry*, 89 App. Div. 226; 85 Supp. 924.

### C. ORDER REMITTING REPORT.

After hearing upon appeal from the *pro forma* decree assessing tax the Surrogate, acting judicially, makes a second order affirming, modifying or reversing the original order; or he may remit the whole proceeding back to the appraiser for further testimony or for proceedings in accordance with the Surrogate's view of the law. Upon such an order the appraiser makes a second or supplemental report upon which a second taxing order is entered and from which a second appeal lies to the Surrogate.

As an example, the following order, remitting the report to the appraiser, was entered in the *Horler* case:

#### Order Remitting Report to Appraiser.

At a Surrogate's Court held in and for the  
County of New York, at the Hall of  
Records in the Borough of Manhattan, on  
the 27th day of December, 1916.

Present — Hon. ROBERT LUDLOW FOWLER,

*Surrogate.*

In the Matter	}
of	
The Transfer Tax upon the Estate of	
MARY HORLER,	
Deceased.	

The appeal of James Horler, individually and as executor of the Last Will and Testament of Mary Horler,

deceased, from the appraisal and report filed herein on May 22, 1916, and from the order entered herein on June 6, 1916, fixing, assessing and determining the Transfer Tax in respect to the property of the said testatrix Mary Horler, having duly come on to be heard and having been heard by me;

Now, upon the facts appearing before me, and after hearing McReynolds & Hunter, attorneys for James Horler, individually and as executor, and Lafayette B. Gleason, Esq., attorney for the Comptroller of the State of New York; and due deliberation having been had and having filed my opinion herein on November 27, 1916;

IT IS ORDERED, ADJUDGED AND DECREED, that the interest which passed to decedent's husband James Horler in the real estate and premises No. 305 Hewes Street, Brooklyn Borough, New York City, by virtue of the conveyance made by her on November 5th, 1914, and which included the right to the possession of the said real estate in fee simple in the event of his surviving the decedent is not subject to a tax under the provisions of the Transfer Tax Law of the State of New York; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the right of James Horler, as survivor to the \$11,500.00 of bonds and mortgages which he and the decedent held as joint tenants at the time of her death under the instruments of assignment and transfer made by the decedent during October and November, 1914, being derived from a contract made and entered into for a valuable consideration, is not subject to a tax under the provisions of the Transfer Tax Law of the State of New York; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the right of James Horler, as survivor to the \$16,000.00 bond and mortgage, which the decedent and he held as joint

tenants at the time of her death under the instrument of assignment and transfer made by him on November 5, 1914, to the decedent, being derived from a contract made and entered into for a valuable consideration, is not subject to a tax under the provisions of the Transfer Tax Law of the State of New York; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the bank accounts which were held in the Irving Savings Institution and in the Emigrants' Industrial Savings Bank in the joint names of decedent and her husband James Horler at the time of her death and which were so held in their joint names prior to the enactment of Chapter 664 of the Laws of 1915 did not constitute any part of the estate of decedent subject to the provisions of the Transfer Tax Law, and the right of James Horler to the said bank accounts as survivor, is not subject to a tax under the Transfer Tax Law of the State of New York; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the order entered herein on June 6, 1916, fixing, assessing and determining a transfer tax in respect to the property of the decedent Mary Horler, be and the same hereby is in all respects reversed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Appraiser's report, filed herein on May 22, 1916, and upon which said order of June 6, 1916, was made, be and the same hereby is remitted to the said Appraiser for correction in the manner indicated in the opinion filed herein on November 27, 1916.

ROBERT LUDLOW FOWLER,  
*Surrogate.*

d. SUPPLEMENTAL REPORT OF APPRAISER.

Upon the order remitting the original report, the appraiser makes a supplemental report, of which the following is an example:

**Supplemental Report of Appraiser.****SURROGATE'S COURT,****NEW YORK COUNTY.**

---

In the Matter  
of  
The Appraisal, under the Transfer Tax  
Law, of the Estate of MARY HORLER,  
Deceased.

---

I, John J. Lyons, having been duly designated to appraise the estate of the above named decedent, having made and filed my report herein on the 22nd day of May, 1916, and an order having subsequently been entered remitting said report to me for the purpose of correction in the manner indicated in the opinion filed herein on November 27, 1916, by Hon. Robert Ludlow Fowler, Surrogate, New York County, do hereby submit this as a supplemental and amended report:

First.—Paragraph First of the original report is confirmed.

Second.—I further report the following appearances: Lafayette B. Gleason, Esq., attorney for State Comptroller; McReynolds & Hunter, Esqs., attorneys for Executor, 80 Maiden Lane, New York City.

Third.—Paragraph Fifth of the original report as amended in the following particulars:

Schedule A1, real estate, premises known as 305 Hewes Street, Brooklyn, Kings County, New York, assessed at \$6,300, valued at \$6,500, held by decedent and her husband,

James Horler, as joint tenants. Original report taxed half, \$3,250. Amended to read "Exempt."

Schedule A2 recited two bank accounts, aggregating with interest \$6,016, held in joint accounts, payable to either or the survivor, by this decedent and her husband, James Horler. Original report taxed in full, \$6,016. Amended to read "Exempt."

Schedule A3 recited items of personal property, jewelry, etc., valued at \$325 and mortgages, held jointly by this decedent and her husband, James Horler, aggregating, with accrued interest, \$28,124.63. These mortgages, taxed in original report in full, should be reported as "Exempt." Total assets under paragraph Fifth should therefore be amended to \$325, and deductions of \$500 confirmed, and net estate therefore shows "Deficit."

Fourth.—Paragraph Sixth should therefore be amended to read as follows: "As no beneficiary is to receive an amount equal to or exceeding the amount of the statutory exemption, I find no tax to accrue in this proceeding."

Respectfully submitted,

JOHN J. LYONS, *Appraiser*.

Dated, New York City, N. Y., March 17, 1917.

e. SECOND TAXING ORDER.

Upon the supplemental report of the appraiser a second taxing order is entered. In the illustrative case, under the Surrogate's views of the law, the entire estate was exempt. The order upon the supplemental report was, accordingly, as follows:

**Order on Supplemental Report.**

At a Surrogate's Court held in and for the  
County of New York, at the Hall of  
Records in the Borough of Manhattan,  
City of New York, on the 4th day of April,  
1917.

Present — Hon. ROBERT LUDLOW FOWLER, *Surrogate*.

---

In the Matter of An Application to adjust the Transfer Tax upon the Estate of MARY HORLER, Deceased.	}
--	---

---

On reading the supplemental report of John J. Lyons, Esq., the appraiser, filed herein on the 17th day of March, 1917, wherein it appears that the said decedent died on the twenty-fourth day of July, 1915, and on motion of McReynolds & Hunter, attorneys for the Executor herein, it is

ORDERED AND ADJUDGED that the transfer of the property of which said decedent died seized and possessed, and referred to in said report, is exempt from tax under the act in relation to taxable transfers of property.

ROBERT LUDLOW FOWLER, *Surrogate*.

**f. NOTICE OF APPEAL FROM SECOND TAXING ORDER.**

From the second taxing order, in the illustrative case, the Comptroller appealed to the Surrogate, stating the grounds of his appeal as follows:



**Notice of Appeal to the Surrogate by Comptroller.****SURROGATE'S COURT,**

NEW YORK COUNTY.

In the Matter	}
of	
The Transfer Tax upon the Estate of	
MARY HORLER,	
Deceased.	

SIRS :

PLEASE TAKE NOTICE that the Comptroller of the State of New York is dissatisfied with the appraisal herein of the property of the above named decedent as made and set forth in the report of the appraiser, filed herein on the 17th day of March, 1917, and with the order fixing and assessing the transfer tax in respect to the transfer of the property of said decedent, made and entered herein on the 4th day of April, 1917, and hereby appeals to the Surrogate from the said order assessing tax as aforesaid, on the ground that the same failed to tax certain real estate valued at \$6,500 held by decedent and her husband as joint tenants, and two bank accounts amounting to \$6,016, standing in the name of decedent and her husband, and certain personal property and mortgages held jointly by decedent and her husband.

Dated, New York, April 6, 1917.

Yours, etc.,

LAFAYETTE B. GLEASON,  
Attorney for State Comptroller,  
Office and P. O. Address, 233  
Broadway, Borough of Man-  
hattan, New York City.

To:

MESSRS. McREYNOLDS & HUNTER,  
Attorneys for Executor,  
86 Maiden Lane, New York City.

DANIEL J. DOWDNEY, Esq.,  
Clerk of Surrogate's Court.

g. TAXING ORDER UPON SECOND APPEAL.

If any portion of the estate in the *Horler* case was taxable a second order fixing tax, in the same form as the original order, would have been entered. As the whole estate was exempt, under the court's ruling, the following order was entered:

**Taxing Order Upon Second Appeal.**

At a term of the Surrogates' Court held in  
and for the County of New York at the  
Hall of Records, Borough of Manhattan,  
New York City, on the 24th day of April,  
1917.

Present — Hon. ROBERT LUDLOW FOWLER, *Surrogate*.

---

In the Matter	}
of	
The Transfer Tax upon the Estate of	
MARY HORLER,	
Deceased.	

---

James Horler, individually and as Executor under the Will of the above named decedent, having appealed from the report of the appraiser duly filed herein on the 22d day of May, 1916, and the order fixing tax thereon on the 6th

day of June, 1916, and on the hearing of said appeal the Surrogate having reversed the order fixing tax and remitted the matter to the appraiser, and a new appraisement having been had and filed herein on the 17th day of March, 1917, and an order having been entered thereon on the 4th day of April, 1917, and the Comptroller having appealed from said last named order and report of the appraiser to the Surrogate on the ground set forth in said Notice of Appeal.

Now, after hearing Messrs. McReynolds & Hunter, attorneys for James Horler as Executor, and due deliberation having been had, it is

ORDERED that the said appeal of the Comptroller of the State of New York is hereby denied, and the order fixing tax entered herein on the 4th day of April, 1917, be and the same hereby is in all respects affirmed.

ROBERT LUDLOW FOWLER, *Surrogate*.

**h. NOTICE OF APPEAL TO APPELLATE DIVISION.**

From the order thus entered the Comptroller appealed to the Appellate Division, which appeal is now pending. The notice of appeal was as follows:

**Notice of Appeal to the Appellate Division.**

**SURROGATE'S COURT,**

**NEW YORK COUNTY.**

---

In the Matter	}
of	
The Transfer Tax upon the Estate of	
MARY HORLER,	
Deceased.	

---

SIRS:

PLEASE TAKE NOTICE that the Comptroller of the State of New York hereby appeals to the Appellate Division of the Supreme Court for the First Judicial Department from the orders of this Court dated December 27th, 1916, reversing the order fixing tax and remitting the report to the appraiser, the order of exemption on the supplemental report made and entered on the 4th day of April, 1917, and from the order denying the appeal of the Comptroller made and entered on the 24th day of April, 1917, and from each and every part of said orders.

Dated, New York, May 4th, 1917.

Yours, &c.,

LAFAYETTE B. GLEASON,  
Attorney for State Comptroller,  
Appellant,

Office and P. O. Address, Woolworth Building, Borough of Manhattan, New York City.

To:

DANIEL J. DOWNEY, Esq.,  
Clerk of the Surrogates' Court,  
New York County.

McREYNOLDS & HUNTER, Esqs.,  
Attorneys for Executor,  
80 Maiden Lane,  
New York City.

## 5. Before the Appellate Courts.

From the determination of the probate court an appeal lies in all jurisdictions to the appellate courts following generally the practice on appeals from all decrees and orders of the court of probate.

But the right of appeal is not a vested right.

*Crittenberger v. State* (Ind.), 114 N. E. 225.

And the State or county has the same right of appeal as the executor under the statutes.

*Re Hopeman's Estate*, 167 Neb. 792.

Under the practice in many States the appeal brings up the whole question *de novo*, and defenses may be altered or new defenses made.

*Seviers' Executors v. Commonwealth*, 181 Ky. 49; 203 S. W. 1070.

In New York the questions raised on appeal are limited by the notice of appeal.

#### a. WHO MAY APPEAL.

Some question arises as to how far an executor may litigate a question over the amount of inheritance taxes in which he is interested only to the extent of his personal liability.

So, when the question as to taxation was submitted to the Appellate Division on an agreed state of facts and the executors only appealed while all other parties acquiesced, it was held that the executor did not have an appealable interest.

*Isham v. N. Y. Assn. for the Poor*, 177 N. Y. 218; 69 N. E. 367.

So, it was held in Pennsylvania that the executors were not interested in the question whether a tax was presently due and payable. The court said:

“The further question argued, whether the tax is now due and payable, is not raised by this record. The appeal is by the executors and trustees and it does not appear that they have any interest in the question. The executors are nowhere made chargeable with the tax until distribution.”

*Handley's Estate*, 181 Pa. St. 339, 347; 37 A. 587.

On the other hand, it was held in Illinois, that where a trustee, who in good faith believes that an inheritance tax has been assessed illegally or in an improper amount, may appeal from the judgment not only to preserve the rights of the beneficiaries but to protect himself from personal liability in case he should pay a claim that might afterwards be adjudged illegal.

*People v. Northern Trust Co.*, 266 Ill. 139; 107 N. E. 100.

An executor always has the right to appeal to the Surrogate from the *pro forma* order fixing tax.

*Matter of Cornell*, 66 App. Div. 167, 171; 73 Supp. 32; modified 170 N. Y. 423; 63 N. E. 445.

On the one hand, it is not just that the entire estate should be put to an expense in opposing the tax against a single beneficiary. On the other, the executor usually represents all beneficiaries before the appraiser and the Surrogate. In a recent case the executor was interested both individually and as executor and appealed only in the second capacity. The Appellate Division, in sustaining the appeal, said:

“It is also urged by the respondent that the appellant as executrix is not aggrieved by the order assessing a transfer tax and hence her appeal raises no question. The notice of appeal does not, necessarily, purport to be an appeal by the executrix. The use of the word executrix, it might be urged, is merely descriptive, but assuming that the appeal is taken by her as executrix, we think she had a right to appeal. In *Matter of Cornell*, 66 App. Div. 167; 73 Supp. 32, it was held that ‘the executor as such is entitled to appeal from an order and decree fixing a transfer tax. He is made personally liable for the tax and is a party aggrieved within the meaning of the provisions of the Code of Civil Procedure relating to appeals.’ The Court of

Appeals modified the order of the Appellate Division (170 N. Y. 423; 63 N. E. 445) and in doing so I think necessarily held that the appeal was properly taken by the executor.

“But independent of authority it must be that an executor of an estate against which a transfer tax has been imposed has such an interest therein as entitles him to have an order imposing the tax reviewed on appeal.”

*Matter of Dalsimer*, 167 App. Div. 365; 153 Supp. 58; aff. 217 N. Y. 608.

The true rule probably is that an executor can appeal only in so far as he protects himself from his personal liability; and, beyond that, the expense of the litigation should be borne by those directly interested.

In New York a foreign executor is held to have the right to appeal.

*Matter of Cornell*, 66 App. Div. 167, 171; 73 Supp. 32; modified 170 N. Y. 423.

#### b. ORDER APPEALED FROM.

In a recent case it was contended by the attorney for the estate before the Appellate Division that the notice of appeal should be not only from the order of the Surrogate upon appeal to him from the *pro forma* order fixing the tax but from all the intermediate orders, including an order remitting the report to the appraiser; but the point was ignored, and the established practice of appealing only from the order of the Surrogate upon appeal to him in his judicial capacity was tacitly approved.

*Matter of Hernandez*, 172 App. Div. 467; 159 Supp. 59; aff. 219 N. Y. 24.

Where, after an appeal from a Surrogate's decree in a transfer tax proceeding, the matter is remitted to the appraiser and the Surrogate makes the usual order fixing the cash value of the property transferred and the amount

of the taxes, no appeal lies from his order as a taxing officer directly to the Appellate Division.

*Matter of Vietor*, 160 App. Div. 32; 144 Supp. 918.

The Surrogate acts merely as assessor in determining the tax. When he acts judicially and makes an order on appeal from the taxing order there is no second appeal to the Surrogate but direct to the Appellate Division.

*Matter of Steinwender*, 176 App. Div. 517; 158 Supp. 779; aff. 221 N. Y. 611.

Where the notice of appeal states that it is from the order of January 24, 1903, as resettled by order of March 24, 1903, the resettled order is the one appealed from.

*Matter of Post* 85 App. Div. 611; 82 Supp. 1079.

And the discretion of the Surrogate in refusing to resettle an order is not reviewable on appeal.

*Matter of Sondheim*, 69 App. Div. 5; 74 Supp. 510.

When the Court of Appeals has directed the modification of a Surrogate's taxing order fixing a transfer tax, a party to that appeal cannot thereafter raise *de novo* any of the questions which were determined or which might have been determined, by a second appeal taken within sixty days from the entry of the taxing order by the Surrogate.

*Matter of Cook*, 125 App. Div. 114; 109 Supp. 417; aff. 194 N. Y. 400; 87 N. E. 786.

“When we keep in mind the fact that the Surrogate is a mere taxing officer or assessor, when acting under section 231, no incongruity is presented, although it is somewhat unusual that a judicial officer should sit in review of his own decision as an assessor. It is, however, to be said that on an appeal to the Surrogate, acting judicially, a complete record is submitted and both sides are heard. We are of opinion that the Appellate Division properly dismissed the



Comptroller's appeal from the order of the Surrogate made when acting as a taxing officer."

*Matter of Costello*, 189 N. Y. 288; 82 N. E. 139.

c. SERVICE OF NOTICE OF APPEAL.

Failure to file the notice of appeal in the office of the Surrogate, within the time prescribed by this section, is not excused by an admission by the attorney for the State Comptroller of service of a notice of appeal.

A court or judge cannot extend the time within which an appeal may be taken. (Code Civ. Pro., § 784.)

*Matter of Seymour*, 144 App. Div. 151; 128 Supp. 775.

An appeal to the Appellate Division must be taken within thirty days after service upon the attorney for the appellant of a copy of the judgment or order appealed from, and a written notice of the entry thereof. The period of limitation does not begin to run until the prevailing party serves the necessary notice upon the attorney for the other side, and the service of the other papers and even the written admission of such papers signed by the other attorney do not start the time of limitation running.

*McGruer v. Abbott*, 47 App. Div. 191; 62 Supp. 123.

d. PAPERS ON APPEAL.

These must include all that were acted upon by the Surrogate, including the will.

*Astor v. State*, 25 N. J. Eq. 303; 72 A. 78.

And the rules require a certificate to this effect from the clerk of the Surrogate's Court, but this is usually waived and immaterial papers eliminated by stipulation; the following being the customary form:

**Stipulation Waiving Certification.**

Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the papers as hereinbefore

printed consist of true and correct copies of the notice of appeal, the order appealed from, and all the papers upon which the court below acted in making the orders appealed from and the whole thereof, now on file in the office of the Clerk of the Surrogate's Court of the county of New York.

Certification thereof in pursuance of Section 1353 of the Code of Civil Procedure is hereby waived.

Dated, New York, May 23, 1917.

LAFAYETTE B. GLEASON,  
Attorney for State Comptroller.

McREYNOLDS & HUNTER,  
Attorneys for the Executor.

e. COSTS.

In New York costs are not allowed on appeal to the Surrogate from *pro forma* taxing orders. (L. 1908, ch. 310.)

Prior to that statute costs were in the discretion of the Surrogate.

*Matter of Eaton*, 55 Misc. 472; 106 Supp. 682.

On proceedings to collect by the district attorney costs are still in the Surrogate's discretion and will be imposed against the State where the proceedings were unjustifiable.

*Matter of Brady*, N. Y. L. J., February 5, 1913.

The Appellate Division, when reversing an order denying an application, the granting of which was not opposed by the party against whom it was made, will not award costs of the appeal against such party.

*Matter of Collins*, 104 App. Div. 184; 93 Supp. 342.

Where a final order assessing a transfer tax upon a trust fund which came into the possession of the trustees after decedent's death is reversed by the Appellate Division, the

only costs which can be allowed to appellant are the costs of the appeal, viz.: \$20 before argument and \$40 for argument, besides disbursements.

*Matter of Wright*, 89 Misc. 108; 151 Supp. 378.

A bill of costs in the Court of Appeals may be awarded to each respondent represented by separate counsel.

*Matter of Gibson*, 157 N. Y. 680.

And the State Comptroller may tax a bill of costs against each of two unsuccessful appellants where so represented.

*Matter of Saunders*, 86 Misc. 582; 149 Supp. 461.

#### f. APPEALS TO COURT OF APPEALS.

By a recent amendment these can only be taken where there is a reversal by the Appellate Division, or the decision is not unanimous, unless leave to appeal is granted on motion by the court below and if denied by that court, on motion to the Court of Appeals. The amendment took effect June 1, 1917.

Such appeals are limited to questions of law.

*Matter of Thorne*, 162 N. Y. 238.

And must be from a final order.

*Matter of Browne*, 195 N. Y. 522; 88 N. E. 1115.

*Matter of Vivanti*, 204 N. Y. 513.

A question certified by the Appellate Division will not be reviewed if it involves a question of fact.

*Matter of Martin*, 219 N. Y. 557; 114 N. E. 1071.

Or if it is not raised by the record.

*Matter of Teller*, 223 N. Y. 565.

Where the Surrogate is reversed and the order of the Appellate Division is silent on the question it will be presumed by the Court of Appeals that the reversal was on questions of law only.

*Matter of Keefe*, 164 N. Y. 352.

g. TO SUPREME COURT OF THE UNITED STATES.

The record must show that a Federal question is involved and that it was brought to the attention of the State court.

Sec. 709 U. S. Revised Statutes.

*Matter of Stickney*, 185 N. Y. 107; 77 N. E. 993; writ of error dismissed, sub nom.; *Stickney v. Kelsey*, 209 U. S. 419; 28 S. Ct. Rep. 508.

*Matter of Houdayer*, 150 N. Y. 37; 44 N. E. 718; writ of error dismissed sub nom.; *Scudder v. Comptroller*, 175 U. S. 32; 20 S. Ct. Rep. 26.

“When no such ground has been presented to or considered by the courts of the State, it cannot be said that those courts have disregarded the Constitution of the United States, and this court has no jurisdiction.”

*Scudder v. Comptroller of New York*, 175 U. S. 32-36; 20 S. Ct. Rep. 26.

Where judicial proceedings in one State are relied upon as a defense to an assessment by the authorities of another State, a right under the Constitution of the United States is specially set up and claimed, though it was not in terms stated to be such a right.

*Tilt v. Kelsey*, 207 U. S. 43; 28 S. Ct. Rep. 1.

Where the best that can be said for the plaintiffs in error is that the action of the State court was ambiguous, the United States Supreme Court will resolve the ambiguity against the parties complaining, who are bound to show clearly that a Federal right was impaired, rather than endeavor to spell out a Federal question to aid a defense which is merely technical and destitute of substantial merit.

*Stickney v. Kelsey*, 209 U. S. 419; 28 S. Ct. Rep. 508.

## D.—SUBSEQUENT PROCEEDINGS.

### 1. Motions to Modify Decree.

It frequently happens that beneficiaries discover some reason why they think the tax should not be paid after the

time to appeal from the taxing order has expired. The only remedy is by motion to modify or vacate the taxing order. Such motions must be on notice to the Comptroller. They cannot be entertained *ex parte*.

*Matter of Fulton*, 30 Misc. 70.

a. WHERE THERE WAS A MISTAKE OF FACT.

This may be corrected on motion, and where there is no dispute and the mistake is obvious, the Surrogate may correct it without sending the matter back to an appraiser.

*Matter of Cameron*, 97 App. Div. 436; 89 Supp. 977; aff. 181 N. Y. 560; 74 N. E. 1115.

Where the Surrogate has by order confirmed the appraiser's report without noticing that it is defective, he has authority to vacate his order of confirmation and send the report back to the appraiser for correction.

*Matter of Earle*, 74 App. Div. 458; 77 Supp. 503.

A mistake in an administrator's affidavit whereby stock worth \$14,193 was appraised at \$47,310 was corrected though the two-year limitation had elapsed.

*Matter of Boyle*, 92 Misc. 143; 156 Supp. 173.

Where a debt had been inadvertently overlooked the deduction was allowed on motion and the order modified by reducing the tax proportionately.

*Matter of Campbell*, 50 Misc. 485.

Where the executor believed that notes would be paid by the makers at the time of the appraisal, but they proved worthless, decree modified.

*Matter of Sherar*, 25 Misc. 138; 54 Supp. 930.

But where newly discovered evidence as to domicile would not change the result, a motion to reopen the case on the ground of mistake was properly denied.

*Re Harkness* (Cal.), 169 Pac. 78.

An allegation, in a petition by the State Comptroller of his belief, based upon conclusions of counsel, that deceased was at time of death possessed of certain valuable paintings, not reported to appraiser, unsupported by affidavits, is insufficient to warrant vacating a decree and reopening tax proceedings.

An application under Code Civil Procedure, § 2490, subd. 6, providing for new trial, to reopen tax proceedings, to determine decedent's domicile because of newly discovered evidence, where based upon the unverified statement of the State Comptroller, by his counsel, will not be considered.

Where decedent's will was probated in another State, and the Comptroller had ample time to acquaint himself with the proceedings before trial of tax proceedings, he cannot set up facts from an appraisement therein, then more than six months old, as newly discovered evidence for a new trial.

An application by the State Comptroller for a new trial in tax proceedings in decedent's estate to contest the matter of decedent's residence must show by affidavits that the State Comptroller at the time of trial did not have knowledge of the alleged newly discovered facts concerning the domicile of deceased.

*Matter of Gates*, 170 Supp. 299.

Where the appraiser misconstrued a will and a beneficiary paid tax on property which proved afterwards not to belong to him,—held a mistake of fact and tax refunded.

*Matter of Willets*, 119 A. D. 119; 100 Supp. 850; 104 Supp. 1150; aff. 190 N. Y. 527; 83 N. E. 1134.

So, where a mathematical mistake was made in computing the tax.

*Matter of Scott*, 208 N. Y. 602.

And generally, clerical errors are cured on such motions.

*Matter of Henderson*, 157 N. Y. 423; 52 N. E. 183.

b. WHERE THERE WAS LACK OF JURISDICTION.

Such motions are granted where the moving papers show that the appraiser lacked jurisdiction, as when both parties mistakenly supposed that the estate was, under the law, subject to a transfer tax.

*Matter of Scrimgeour*, 175 N. Y. 507; 67 N. E. 1089.

Or where the tax has been paid under an unconstitutional statute.

*Matter of O'Berry*, 91 App. Div. 3; 86 Supp. 269; aff. 179 N. Y. 285; 72 N. E. 109.

*Norton v. Selby County*, 118 U. S. 425; 6 S. Ct. Rep. 1121.

*Aetna Insurance Co. v. Mayor*, 153 N. Y. 331; 47 N. E. 593.

Although the transfer tax has been levied, the Surrogate has power to modify his decree, when the remaindermen, who failed to appear on the appraisal, were only notified that their father's estate would be appraised, and the appraisal included property belonging to a trust fund over which the father exercised an appointment in favor of such remaindermen.

*Matter of Backhouse*, 110 App. Div. 737; 96 Supp. 466; aff. 185 N. Y. 545; 77 N. E. 1181.

A Surrogate has power on a motion to vacate so much of a decree assessing property subject to a transfer tax as was made without jurisdiction after the time to appeal from said order has expired.

*Matter of Jones*, 54 Misc. 202; 105 Supp. 932.

*Matter of Silliman*, 79 App. Div. 98; 80 Supp. 336; aff. 175 N. Y. 513; 67 N. E. 1090.

So, where the appraiser taxed property passing under a power of appointment and the heirs were held to receive it from an ancestor and not under the power; the time to appeal had long expired and the motion to modify was granted six years later.

The court said:

“In making the motion to modify the order, and on the

appeal, the executor contended that both the tax appraiser and the Surrogate were without jurisdiction to impose a tax on these interests, inasmuch as there was no question of fact involved, and on the uncontroverted facts as matter of law the children took nothing so far as these interests are concerned from the testatrix. The children of the testatrix are, of course, concluded by the determination of the tax appraiser as confirmed by the Surrogate, with respect to the value and the tax on any property they took by virtue of their mother's will, but not so, we think, with respect to any of the three interests in question which they did not take under her will. It has been held with respect to property passing under a will, which is not subject to the transfer tax, that there is no jurisdiction to impose the tax, and that it should be refunded after having been paid."

*Matter of Coogan*, 27 Misc. 563; 59 Supp. 111; aff. 45 App. Div. 628; 61 Supp. 1144; 162 N. Y. 613; 57 N. E. 1107.

*Matter of Morgan*, 164 App. Div. 854; 149 Supp. 1022; aff. 215 N. Y. (mem.).

### C. MAY NOT CORRECT AN ERROR OF LAW.

An error of law can be corrected by appeal only.

*Matter of Niven*, 29 Misc. 550; 61 Supp. 956.

A decree of the Surrogate cannot be opened to correct an error of law made in calculating executors' commissions, and the remedy is by an appeal from the decree. If the Surrogate erred in allowing the commissions objected to, the error was one of law and not a clerical mistake.

*Matter of Monteith*, 27 Misc. 163; 58 Supp. 379.

A debt overlooked at the time of the appraisal was held not sufficient ground in *Matter of Hamilton*, 41 Misc. 268; 84 Supp. 44; but such relief is usually granted.

And where the application is based on the proposition that the appraisal was too high after the time to appeal



has expired the motion is to correct an error of law and not a mistake of fact and is invariably denied.

*Matter of Van Nest*, N. Y. L. J., November 8, 1913; aff. 168 App. Div. (mem.).

*Matter of Wallace*, 28 Misc. 603; 59 Supp. 1084.

When the moving affidavits merely stated that the assets had been overvalued supported only by appraisal of real estate brokers at a much lower figure, application denied.

*Matter of Barnum*, 129 App. Div. 418; 114 Supp. 33.

The same rule applied against the State where under-valuation claimed without facts to support the assertion.

*Matter of Johnson*, 37 Misc. 542; 75 Supp. 1046.

When the moving papers disclosed no other ground than the sale of real estate at a lower figure the Surrogate has no power to modify the decree assessing tax.

*Matter of Lowry*, 89 App. Div. 226; 85 Supp. 924.

The same rule is applied against the State: The mere fact that assets have since sold for a larger sum than the value fixed on the appraisal is not ground for vacating the decree.

*Matter of Bruce*, 59 Supp. 1083.

Of course if the discrepancy were sufficient to indicate fraud the fact would be competent, coupled with other evidence.

Where the facts were in the possession of the executors which might have reduced the appraised value and were not disclosed there is no ground for re-opening the case. So, where a beneficiary paid the tax and eight years afterwards sought a refund on the ground that he took the property by deed from the deceased, *inter vivos*, and the deed was not recorded nor produced on the appraisal it was held that he was not entitled to a refund.

*Matter of Mather*, 90 App. Div. 382; 85 Supp. 657.

On the other hand the mistake may be one of mixed law and fact where the relief is usually granted. To illustrate: Taxes computed on a mutually mistaken construction of law and fact or paid as a temporary payment should be refunded. Money paid by executors on a life estate, in ignorance of the fact that the life estate had been terminated by death, may be recovered back by the executors as paid under a mistake of fact. This is not a voluntary payment, as to constitute a voluntary payment it must be made with full knowledge of all the facts and circumstances. Where a beneficiary under misconception of the law advances the money to pay more than was really chargeable to him, and where the property is sold for the tax, he is subrogated to the rights of the State and should be repaid what he has erroneously expended.

*Sherman v. United States*, 178 U. S. 150, 152; 20 Sup. Ct. 779.

*Matter of Skinner*, 106 App. Div. 217; 94 Supp. 144; mod. 92 Supp. 972.

*Kahn v. Herold*, 147 Fed. 575; aff. 86 C. C. A. 598; 159 Fed. 608; 163 Fed. 947.

*Matter of Wilcox*, 118 Supp. 254.

d. LACHES.

Where a charitable corporation failed to appear before the appraiser and claim exemption or to notify its attorney of the bequest in time to appeal the court refused to grant relief on motion to modify the decree fixing the tax. It said:

“By subdivision 6 of Section 2490, Code of Civil Procedure, the Surrogate is authorized ‘To open, vacate, modify or set aside or to enter as of a former time, a decree or order of his court; or to grant a new trial or a new hearing for fraud, newly-discovered evidence, clerical error, or other sufficient cause only in the same manner, as a court of record and of general jurisdiction exercises the same powers.’ The petition presented to the Surrogate does not

allege fraud, newly-discovered evidence or clerical error. Did it allege 'other sufficient cause'? That question was one addressed to the judicial discretion of the Surrogate, and he determined that the oversight of the respondent and failure on its part to bring to the attention of its attorneys information possessed by it, when it was notified of the hearing before the appraiser, was not sufficient cause to grant a new hearing. He might also have determined that the allegations presented in the petition did not disclose that the respondent would on said statement be entitled to exemption. For the reasons stated the order of the Appellate Division must be reversed and the order of the Surrogate affirmed, without costs."

*Matter of Townsend*, 215 N. Y. 442.

So where the appraiser failed to deduct proportionate commissions on foreign assets and the executor neglected to take any appeal, application denied.

*Matter of Badger*, N. Y. L. J., June 8, 1912.

#### e. BAD FAITH.

Of course the court will not grant such an application where there is reason to believe that it is not made in good faith. This was very recently illustrated in a rather curious case before the New York County Surrogate's Court. The opinion speaks for itself:

"This is an application by a person claiming to be the sole heir and next of kin of the decedent for an order vacating the order heretofore entered which adjudged that the decedent was not a resident of this State at the time of his death, and that his estate therefore was not subject to a tax under the provisions of the Tax Law of this State. After an appraiser had been designated by this court to appraise the estate of the decedent subject to a transfer

tax, the executor made an application to vacate the order designating the appraiser and to declare the estate exempt from taxation upon the ground that the decedent had his domicile in France at the time of his death. The State Comptroller did not oppose the motion, and an order was entered adjudging that the estate was exempt from taxation because the decedent was not a resident of this State. The present applicant formally consented to the entry of that order. Subsequently the applicant's claim to a part of the estate was contested by other persons upon the ground that under the law of France the property passed to the contestants and not to the applicant. Apparently realizing the validity of this claim the applicant now comes to this court and asks that the order of exemption be vacated and that it be adjudged that the decedent had his domicile in this State. He had no compunction in joining in the application to this court to declare the decedent a resident of France when such adjudication rendered him exempt from the payment of a transfer tax in this State, and now that he finds it to his interest to have the court make a contrary adjudication, he has no hesitation in reversing his position and contending that the decedent had his domicile in this State. The court looks with grave distrust upon such an application. As far as the petitioner is concerned there is no newly discovered evidence submitted on this application and no reason is adduced which would warrant the court in vacating the order heretofore entered. The petitioner's right to the property will be amply protected in the accounting proceeding now pending, and the right of the State to a tax upon the estate of the decedent may be determined by this court in a proper proceeding brought for that purpose. Application denied."

## f. STATUTES OF LIMITATION.

Generally they do not run against the State.

*State v. Gerhards*, 99 Kans. 462; 162 Pac. 1149.

Under the California practice the executor may demur to the petition and thus raise the question of limitation.

*Chambers v. Gallagher* (Cal.), 171 Pac. 971.

And where the act provides that the proceeding to collect the tax must be commenced within one year after death in case of a gift in contemplation, the proceeding must be brought within that period although the act imposes a lien on the property in the hands of the donee.

*Chambers v. Gibson* (Cal.), 173 Pac. 752.

An order for a refund will not be made where the tax has been paid and the statute of limitations has intervened.

*Matter of Hoople*, 179 N. Y. 308; 72 N. E. 229.

*Matter of Buckingham*, 106 App. Div. 13; 94 Supp. 130.

*Matter of Von Post*, 35 Misc. 367; 71 Supp. 1039.

And the statute may be retroactive, affecting payments already made; *Matter of Hoople, supra*, where the court said:

“It is a fundamental principle of our jurisprudence that no action will lie against a sovereign state, or any of its officers, to enforce an obligation of the State without express legislative permission (*People v. Dennison*, 84 N. Y. 272; *Lewis v. State of N. Y.*, 96 N. Y. 71; *Locke v. State of N. Y.*, 140 N. Y. 480; 35 N. E. 476; *Smith v. Reeves*, 178 U. S. 436; *Flagg v. Bradford*, 181 Mass. 315); and when a State does abdicate this attribute of sovereignty and permits itself to be sued, the citizen who benefits by such an act of grace acquires no vested right thereby, but simply a privilege voluntarily granted by the State, which may be hedged about with terms and conditions, and may be withdrawn as freely as it was given. (*Beers v. Arkansas*, 20

How. (U. S.) 527; *Parmenter v. State of N. Y.*, 135 N. Y. 154; 31 N. E. 1035; *Baltzer v. North Carolina*, 161 U. S. 240; *Railroad Co. v. Tennessee*, 101 U. S. 337; *Railroad Co. v. Alabama*, 101 U. S. 832.)

“In the light of these principles it is obvious that the statutes under discussion (chap. 399, Laws 1892; chap. 284, Laws 1897; chap. 382, Laws 1900) invested the respondent with no absolute right, but conferred upon him a mere privilege, the extent and duration of which depended entirely upon the language conferring it.”

General statutes of limitation do not run against the State in transfer tax proceedings.

*Bradford v. Storey*, 189 Mass. 104; 75 N. E. 256.

Where a proceeding to collect was brought within the limitation and was amended after the limitation had run to increase the demand, held that it related back to the commencement of the proceeding, and was within the statute, as it did not set up a new cause of action.

*Connell v. Crosby*, 210 Ill. 380; 71 N. E. 350.

## 2. Motions to Remit Penalty.

Most of the statutes provide that interest may be reduced from 10% to 6% in case of “unavoidable delay.” Such reduction must be secured on motion to remit the penalty.

On such motion the burden of proving that the delay was unavoidable is on the estate.

*People v. Prout*, 53 Hun, 541; 6 Supp. 457; aff. 117 N. Y. 650.

And the affidavits must make a sufficient case. So when they merely recited that the executors and trustees were nonresidents, had no actual notice of the tax law, or that any tax was due the application was denied.

*Matter of Read*, 204 N. Y. 672.

Many of the statutes provide that litigation to oppose

the tax shall not be construed as “unavoidable delay.” In the absence of such a provision the Wisconsin court so construed it.

“Litigation to determine doubtful and perplexing questions as to the liability of transferees for the inheritance tax and delays occasioned thereby constitute ‘necessary litigation or other unavoidable delay.’—10% penalty remitted.”

*State v. Pabst*, 139 Wis. 561; 121 N. W. 351.

*Matter of Moore*, 90 Hun, 62; 35 Supp. 782.

When the tax would be the same whether the deceased died testate or intestate the pendency of a will contest cannot be pleaded as unavoidable delay.

*Shelton v. Campbell*, 109 Tenn. 690; 72 S. W. 112.

“Unavoidable delay” may be a misnomer of the trustee named in the will which was not discovered for some time.

*In re Banks*, 5 Pa. Co. Ct. 614.

The practice is for the Surrogate not to entertain a motion to remit penalty until after the report of the appraiser has been filed.

*Matter of Theodore Schumacher*, N. Y. L. J., July 29, 1914.

The Surrogate has not power to direct that no interest shall be charged. He is limited to directing, upon a proper case shown, a reduction of the interest from 10% to 6% in accordance with the provisions of the second sentence of § 223.

*Matter of Golden*, N. Y. L. J., July 29, 1914.

It is the penalty alone that can be remitted. There is no provision in any of the statutes for the remission of the interest when it has once accrued and the rights of the State have vested thereto.

*Matter of Griggs*, 163 Supp. 1096.

It is not a matter of equitable relief and therefore payment to the wrong official under a misapprehension of the law is not ground for the granting of relief that is not within the power of the court to afford.

*People ex rel. Lown v. Cook*, 158 App. Div. 74; 142 Supp. 692; aff. 209 N. Y. 578.

Application to remit the interest can only be made to the court upon motion, and is not to be the subject of an appeal from the decree fixing the tax.

*Matter of De Graaf*, 24 Misc. 147; 153 Supp. 591.

Application for the remission of interest will be denied unless it is shown that the reasons required by the statute existed and caused the delay.

*Matter of Wormser*, 51 App. Div. 441; 64 Supp. 897.

Relief from the payment of interest will not be granted where the only reasons given were that the executors were ignorant of the law, or that such payment will be a hardship to the legatee.

*Matter of Platt*, 8 Misc. 144; 29 Supp. 396.

The appraiser cannot remit the penalty. Special application showing grounds therefor must be made to the Surrogate.

*Matter of Skinner*, 106 App. Div. 217; 94 Supp. 144.

“The order fixing tax was entered before the expiration of the eighteen months within which the tax could be paid without penalty, and as the executrix failed to take advantage of this fact the application is denied.”

*Matter of Brower*, N. Y. L. J., July 15, 1913.

Neither is payment into court under a court order a payment and discharge of the tax.

*Pitman v. State* (Okla.), 158 Pac. 1137.



### 3. Mandamus.

The Surrogate cannot by order direct the Comptroller to refund a tax already paid.

*Matter of J. H. B. Dwight*, N. Y. L. J., January 19, 1915.

*Matter of Meyer*, N. Y. L. J., January 31, 1914.

*Matter of Tillinghast*, 94 Misc. 76; 157 Supp. 379; aff. 184 App. Div. 886.

#### a. WHEN WRIT GRANTED.

Mandamus is the proper remedy to compel a refund where the tax has been paid erroneously, as where the decree of the Surrogate was entered without jurisdiction.

*Matter of Coogan*, 27 Misc. 563; 59 Supp. 111; aff. 162 N. Y. 613; 57 N. E. 1107.

Where the tax has been paid erroneously mandamus will lie to compel the payment of interest on the amount so refunded.

*Matter of Hanford*, 113 App. Div. 894; aff. 186 N. Y. 547.

*Matter of Wood*, 91 App. Div. 3; 86 Supp. 269.

It will lie to compel a refund from the County Treasurer before the tax has been turned over to the State Treasury.

*Matter of Park*, 8 Misc. 550; 29 Supp. 1081.

But if the County Treasurer has turned over the fund recourse must be had against the Comptroller.

*Matter of Howard*, 54 Hun, 305; 7 Supp. 594.

*Matter of Hall*, 54 Hun, 637; 7 Supp. 595.

It lies at the instance of the State Treasurer to compel a County Treasurer to turn over the inheritance tax moneys collected by him.

*People v. Raymond*, 188 Ill. 454; 59 N. E. 7.

Mandamus lies to compel the Surrogate to appoint an appraiser:

“Of course before acting on his own motion, the Surrogate must determine whether the facts within his official knowledge are such as to require action, and before acting upon the application of an interested party he must determine whether a proper application has been made, but his duty to act is just as imperative in either case as is the duty of local assessors to obey the command of the statute respecting the performance of their duty, and there is no more reason for saying that he has a discretion in the matter than there is for saying that any officer charged with the performance of a public duty has a discretion whether he will discharge such duty.”

*Kelsey v. Church*, 112 App. Div. 408; 98 Supp. 535.

Mandamus will lie to compel the Comptroller to issue a receipt where the tax has been paid. Upon a petition for writ of mandate to compel the State Comptroller to countersign receipt for inheritance tax, the court held that the law contemplates the payment of the tax by any legatee or heir of the amount due from him, so that he may presently come into possession of his legacy or inheritance, and the receipt attesting its payment should be countersigned by the Comptroller, and should be allowed in the executor's account. The Comptroller has no judicial discretion by which he may exercise the right to refuse to countersign a receipt as directed by the statute. “In countersigning the receipt the Comptroller decides nothing, nor should the receipt be so framed as to bind the State, or to conclude its right to have the question reviewed on appeal should the State desire to appeal from the action of the court.” A writ of mandate lies in proper cases to compel the Comptroller to countersign the receipt for the inheritance tax.

*Becker v. Nye*, 8 Cal. Dec. 129.

**b. WHEN WRIT REFUSED.**

But if there is a dispute as to the amount of tax due and a receipt has been given “on account” mandamus will not be granted.

*People ex rel. Lown v. Cook*, 158 App. Div. 74; 142 Supp. 692; aff. 209 N. Y. 578.

Nor will the writ be allowed where the tax has been paid in another estate and must be refunded to the executors of that estate.

*People ex rel. Ripley v. Williams*, 69 Misc. 402; 127 Supp. 749.

Mandamus does not lie to compel a court to enter a final decree without payment of the tax.

*Strauss v. Costello*, 29 N. D. 215; 150 N. W. 874.

The court said at page 222:

“But it is contended by the appellant that the County Court refused to act and that the writ will lie to compel action. We do not so construe the attitude of the judge of the County Court. He did act. He took jurisdiction of the application for the granting and entry of a decree of final distribution and acted thereon, holding that the petitioner had not shown facts entitling him to such a decree. If the judge was in error, it constituted an erroneous decision on an application of which he had taken cognizance and was an error in judgment reviewable on appeal; and was not a refusal to take jurisdiction or to act. Mandamus does not lie to correct errors of law occurring in course of proceedings in the inferior court. Having assumed jurisdiction, the only function the writ could serve, if issued, would be to direct the judge of the County Court what character of judgment to enter. This is seldom, if ever, proper.”

Mandamus does not lie to compel Comptroller to accept

the nomination of an appraiser by the Surrogate under the New York statute.

*Duell v. Glynn*, 191 N. Y. 357; 84 N. E. 282.

Where there is a right of appeal given from the order a superior court will not restrain the action of a lower court in fixing an inheritance tax.

*Cross v. Superior Court*, 2 Cal. App. 342; 83 Pac. 815.

#### **4. Proceedings to Collect Delinquent Taxes.**

Such proceedings cannot be entertained if commenced before the expiration of the eighteen months allowed by the New York statute for payment without interest.

*Frazer v. People*, 6 Dem. 174; 3 Supp. 134.

But notice to the Comptroller of a proposed decree which does not provide for the payment of any transfer tax does not bar a subsequent proceeding to collect it.

*Matter of Pearsall*, 149 Supp. 36.

An affidavit merely alleging the opinion of the Comptroller or District Attorney that a tax is due and not paid is insufficient. It must disclose all the material facts.

*Matter of McCarthy*, 5 Misc. 276; 25 Supp. 987.

Error in fixing tax on some other basis than market value must be corrected by appeal; it cannot be availed of, in a collateral proceeding to collect the tax, as a defense.

*Hanberg v. Morgan*, 263 Ill. 616; 105 N. E. 720.

The decree fixing the tax is final and conclusive on the defendant in a proceeding to collect it, where no appeal was taken.

*Matter of Hackett*, 14 Misc. 282; 35 Supp. 1051.

*Attorney General v. Skehill*, 217 Mass. 364; 104 N. E. 748.

The only remedy is a motion to modify the decree.

*Matter of Clarkson*, 149 Supp. 32.

## 5. Personal Liability of Executor or Administrator.

Failure to deduct the tax before delivering the property to a legatee makes the executor personally liable for the tax under the statutes.

*Matter of Weed*, 10 Misc. 628; 32 Supp. 777.

*Matter of Allen*, 9 Pa. Co. Ct. 328.

On this theory the executor has a cause of action against the legatee for the amount of the tax which he refuses or neglects to pay.

*Parish v. Adams* (Ga. App.), 95 S. E. 749.

“It is the duty of the personal representative in every case where a tax is due under this act, before paying over any legacy or distributive share, to exact from the person who is to receive it, or retain in his hands out of the legacy or distributive share, a sum sufficient to pay the tax. If he does not he runs the risk of paying it out of his own property.”

*Hunter v. Husted*, 45 N. C. 141.

When the failure to pay is due to his own misconduct he is personally liable.

*Hopkins' Appeal*, 77 Conn. 644; 60 A. 657.

Testamentary trustees knew of a deed by testator conveying away property but failed to disclose it and permitted an inheritance tax to be assessed against the whole estate — held personally liable to *cestui que* trust.

*Lorenz v. Weller*, 267 Ill. 230; 108 N. E. 306.

Where executrix resigns without paying tax the court can appoint an administrator *de bonis non* to collect it.

*Chamberlain v. Stecher*, 78 Ohio St. 271; 85 N. E. 526.

An executor cannot be held personally liable for tax on

property without the State which never comes into his possession, but must be included in his inventory.

*Gallup's Appeal*, 76 Conn. 617; 57 A. 699.

*Matter of Kubler*, N. Y. L. J., August 6, 1915.

The executor should not be charged with 5% interest upon the amount of the transfer tax upon the estate upon the ground that he should have had the tax assessed and paid within six months after the death of the testator, where the testator died October 10, 1896, and probate was issued February 3, 1897, and the tax was assessed May 27, 1897.

*In re Sudds*, 32 Misc. 182; 66 Supp. 231.

In *Matter of Alfred W. Kubler*, N. Y. Law Journal, August 6, 1915, Surrogate Cohalan held: "This is an appeal by the executors from the transfer tax appraiser's report and the order entered thereon, upon the ground that these do not each contain a provision exempting the executors from such liability as arises, with which they would be chargeable for the payment of the transfer tax upon that portion of decedent's estate amounting to \$29,326.48, which at the time of his death and still is situated at Basel, Switzerland, and which will be administered in that country. Neither the executors nor this court appear to have any control over the disposition of this money (*Matter of Dingman*, 66 App. Div. 228; 72 Supp. 694; *Matter of Marshing*, N. Y. Law Journal, March 6, 1907). The appeal is sustained and the executors relieved from liability for tax on the transfer of the said portion of decedent's estate situated in Basel, Switzerland. The order fixing tax will be modified in accordance with the terms of this decision."

Where, after a hearing upon proper notice to all parties interested, it is adjudged that an executor has been unable to collect the moneys for the payment of a tax imposed

under the Transfer Tax Law from the transferred property, through the destruction of the property or obliteration of its value during the process of administration without fault or delinquency upon his part, the executor is not personally liable for the tax, and the provisions of this section with reference to his final accounting are not applicable.

*Matter of Meyer*, 209 N. Y. 386; 103 N. E. 713.

*Matter of Huber*, 86 App. Div. 458; 83 Supp. 769.

Where the executrix has paid a tax to the federal government which was not a proper charge against the estate, this should not be surcharged against the executrix where it is admitted that the sum may be recovered back.

*Matter of Marx*, 117 App. Div. 890; 103 Supp. 446.

## 6. Personal Liability of Beneficiaries.

Where no executor or administrator has been appointed the tax may be enforced by proceedings against the persons receiving the property, but the personal representatives are primarily liable and action must first be brought against the executor or administrator, if there is one.

*Richter v. Commonwealth*, 180 Ky. 4; 201 S. W. 456.

And, generally, personal liability extends to the beneficiaries under the statutes, though most of them make it a condition precedent that they must first have received the property.

*Matter of Hubbard*, 21 Misc. 566.

*Matter of McGee*, N. Y. L. J., February 7, 1913; aff. 160 App. Div. 890; 144 Supp. 1127.

*Succession of Pargoud*, 13 La. Ann. 267.

*Wilhelmi v. Wade*, 65 Mo. 39.

*Matter of Gihon*, 169 N. Y. 443; 62 N. E. 561.

*Matter of Thomson*, 12 Phila. (Pa.) 36.

*In re Lotzgesell*, 62 Wash. 352; 113 Pac. 1105.

*United States v. Tappan*, Fed. Cas. No. 16,431.

*United States v. Trucks*, 27 Fed. 541.

*United States v. Kelly*, 27 Fed. 542.

*Montague v. State*, 74 Md. 481, 487.

**Personal liability cannot extend to foreign executor.**

*Goodrich v. Roch. Trust & S. D. Co.*, 173 App. Div. 577; 160 Supp. 454.

If the tax is imposed upon the right to receive the property the fact that the beneficiaries reside within the State may be sufficient to found jurisdiction.

*Oakman v. Small*, 282 Ill. 360; 118 N. E. 775.

But it has been held in North Carolina, under the statute of that State that the mere fact that the beneficiaries are residents within the jurisdiction is not enough on which to predicate jurisdiction to assess the tax where neither the decedent nor the property are situated within the State.

*State v. Brim*, 27 N. C. 300.

*State v. Brevard*, 62 N. C. 141.

## **7. Compromise Agreements.**

Most of the statutes provide for a compromise agreement between the executor and the State officials where the amount of the tax is contingent or for any reason difficult of ascertainment; but such agreements are within the discretion of the taxing officers, nor are they obliged to accept the computations of an actuary, under such circumstances.

*Mitton v. Burrill*, 229 Mass. 140; 118 N. E. 274.

## **8. Application of Tax Money.**

The inheritance tax, like every other tax, must be for a public purpose and is generally paid into the general fund of the treasury, though some States devote it to specific purposes. So it has been held that a provision that such tax moneys be applied to the maintenance of a State university is valid.

*State v. Henderson*, 160 Mo. 190; 60 S. W. 1093.



**9. Interest.**

Many of the statutes provide for a penalty of 10% after the lapse of eighteen months which may be reduced to 6% upon motion and good cause shown. Under these acts the court has no power to remit the interest altogether but may only reduce it as provided in the statutes.

*Matter of Ermann*, 169 Supp. 207.

## PART VI—THE STATUTES

	PAGE
<b>A. General Review of the State Statutes.....</b>	<b>532</b>
1. Wherein They Agree.....	532
a. Transfers by Will and Intestacy.....	532
b. Transfers in Avoidance.....	532
c. Common Law Transfers.....	533
d. Powers of Appointment.....	534
e. Life Estates .....	534
f. Remainders. . . . .	535
g. Executors and Their Duties.....	536
h. Appraisal. . . . .	536
i. Valuation. . . . .	537
j. Interest, Discount and Penalty.....	537
k. Banks and Trust Companies.....	542
l. The Interest Taxed.....	542
2. Wherein They Differ.....	543
a. Collaterals and Strangers Only.....	543
b. Nonresident Decedents .....	543
c. Tangibles and Intangibles.....	544
d. Reciprocal Statutes .....	544
e. Double Taxation .....	545
3. As Producers of Revenue.....	546
a. The Rate .....	546
b. Exemptions. . . . .	546
c. Facts as to Revenue.....	548
<b>B. The Federal Statute.....</b>	<b>550</b>
1. History and Development.....	550
a. Revolutionary War Tax 1797 to 1802.....	551
b. Civil War Tax 1862 to 1870.....	551
c. Spanish War Tax 1898 to 1902.....	552
2. The Act of 1916 and Amendments.....	553
a. Doubtful Constitutionality .....	553
b. Construction by the State Courts.....	556
c. Expert Opinion .....	565
3. Rates of Tax.....	567
a. Under Act of September 8, 1916.....	567
b. Under Amendment of March 3, 1917.....	567
c. Additional War Tax after October 3, 1917.....	568
d. Tabulation of Rates.....	569
4. Act of 1916.....	569
5. Amendment of March 3, 1917.....	576

	PAGE
6. Amendment of October 3, 1917.....	578
7. The Present Statute and Treasury Department Regulations...	579
8. Federal Forms .....	665
C. The New York Statute.....	685
1. History and Development.....	685
a. Frequent Changes .....	685
b. List of the Statutes.....	686
c. The First Statutes Taxing Only Collaterals.....	687
d. The Act of 1892 Taxing Direct Inheritances.....	688
e. The Act of 1896 — Powers of Appointment.....	689
f. Amendment of 1899 — Highest Rate.....	691
g. Act of 1905 — Real Estate Added.....	692
2. The Present Act and Its Amendments.....	692
a. The Original Statute of 1909.....	692
b. The "Reign of Terror Act".....	693
c. A Radical Change in Theory as to the Transfer Taxed....	694
d. The Amendments of 1911 — Tangibles and Intangibles...	695
e. The Tax Extended to Curtesy.....	695
f. Maximum and Minimum Rates.....	696
3. The Problem as the Property of Nonresidents.....	696
a. The Previous Policy of the State.....	696
b. Real Estate of Corporations.....	697
c. Copartnership Assets .....	698
d. Capital Invested in Business.....	699
e. Attempt to Define a Resident.....	702
f. Distinction Between Tangibles and Intangibles Abolished.	706
4. Recent Amendments .....	707
a. Exemptions. . . . .	707
b. Joint Estates .....	707
c. Tenancy by the Entirety.....	708
d. Computations. . . . .	708
e. The New Rates and Exemptions.....	709
f. Minor Amendments of 1917, 1918 and 1919.....	713
5. Additional Tax on Investments.....	714
a. The Statute .....	714
b. Held Unconstitutional by the Lower Courts.....	717
c. Act Sustained by the Court of Appeals.....	719
d. Questions of Construction.....	727
(1) As to Personal Property Assessment.....	727
(2) As to Exemptions.....	729
(3) As to Debts.....	730
(4) Who Must Pay.....	730
6. The Income Tax.....	000
7. Text of the New York Statute with Amendments to Date....	731

## PART VI—THE STATUTES

---

### A.—GENERAL REVIEW OF THE STATE STATUTES.

The Federal Government and all the States of the Union except Alabama, Florida, South Carolina, Mississippi and New Mexico now impose inheritance taxes.

#### 1. Wherein They Agree.

While the various statutes differ widely as to rates, exemptions and the policy of taxing the personal property of nonresidents they are all built on the same general plan and are largely copied one from the other with only minor differences of procedure.

##### a. TRANSFERS BY WILL AND INTESTACY.

The statutes all tax transfers by will or intestacy and all but Rhode Island, Utah, and the United States confine the tax to the amount passing at death to each beneficiary, the tax being on the right to receive. Rhode Island taxes both the entire estate for the right of the decedent to transfer it and the share of each beneficiary for the right to receive it. The Federal statute and that of Utah tax the entire net estate of the decedent for the right to transfer it to the living successors.

##### b. TRANSFERS IN AVOIDANCE.

With the exception of Virginia all the statutes tax transfers by deed, grant, sale or gift made “in contemplation of death or intended to take effect in possession or enjoyment at or after death.”

California, Colorado, Delaware, Georgia, Kansas, Maine, Massachusetts, Nevada, Rhode Island, Vermont,

Wisconsin and the Federal Act add the provision that such transfers must be made without “adequate” consideration or “fair consideration by a *bona fide* purchaser in money or money’s worth.”

This amendment is construed rather to clarify and explain than alter the law.

*Estate of Reynolds*, 169 Cal. 600; 147 Pac. 268.

When a transfer is made without such consideration within one year of death it is deemed to be in contemplation thereof by the statute of Colorado. When so made within two years, by the Federal statute and Indiana, and when so made within six years by the statute of Wisconsin. In Missouri the transfer is deemed to be “in contemplation” when made without valuable and adequate consideration” and in North Dakota when so made within six years. The other States leave the question to the courts.

### c. COMMON LAW TRANSFERS.

(1) *Joint estates*: After much litigation the courts inclined to the view that the succession of one joint tenant to the whole estate on the death of the other was not a transfer taxable under the statutes. Such transfers are now specifically taxed in New York, California and by the Federal Act by declaring successions to the sole estate by joint tenants a taxable transfer.

(2) *Dower, Curtesy, Community Property*: Most of the statutes now tax a husband’s curtesy and right to his wife’s personalty under common law right. With the exception of two or three States, the statutes all exempt dower. Until 1917 California taxed a widow’s community succession, but now exempts it, as does Louisiana; but the Federal statute taxes it.

d. POWERS OF APPOINTMENT.

Successions under powers of appointment have been the source of much legislative concern and have been fruitful of litigation. They continually present problems as to whether the succession is under the will or deed creating the power or under the exercise of the power by its donee and what happens when the power is not exercised. These methods are followed:

(1) California (prior to 1917) and New Jersey tax the succession under such powers to the estate of the creator of the power.

(2) Arkansas, Indiana, New York, Oklahoma and West Virginia tax the exercise of the power as though the property in fact belonged to the donee thereof, but are silent as to the nonexercise of the power.

(3) California (statute 1917), Colorado, Connecticut, Idaho, Illinois, Massachusetts, Minnesota, Rhode Island, South Dakota and Wisconsin tax the exercise of the power and also tax the succession on failure to exercise it as though it had been the property of the donee and not of the creator of the power.

The other States and Federal Act leave transfers by powers of appointment to judicial construction.

e. LIFE ESTATES.

All the statutes provide for the immediate valuation of life estates and remainders and under the statutes or the practice of the courts this is universally done by the use of the various mortality tables at the prescribed rate of interest. As to these, the States widely differ and the whole subject is reviewed *ante* under Life Estates and Remainders.

## f. REMAINDERS.

The States differ as to whether the tax on the remainder shall be collected at once or postponed until the beneficiary gets the property. In case of contingent remainders where the amount of the property itself is uncertain, as in case of life estates with power to invade the principal, the taxation of the remainder is usually suspended unless the tax is compounded by a settlement agreement which nearly all the statutes permit in such cases.

Eight States make the tax on all remainders due at once: Arkansas, Delaware, Georgia, Maryland, Maine, New Hampshire, Ohio and West Virginia, though the practice is to suspend the tax where the amount is uncertain.

These States postpone contingent remainder taxation until the beneficiary becomes entitled to the property, usually providing that security must be given in case of personal property: Michigan, Missouri, New Jersey, North Dakota, Oklahoma, Oregon, Pennsylvania, Tennessee, Utah and Washington.

The usual practice is to give the remainderman of personal property an election not to pay the tax until he receives the property provided he files a bond to pay the tax with interest with an inventory of the property and renews the bond every five (5) years. This is the law in Arizona, California, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Montana, Missouri, Nevada, New Jersey, Oklahoma, Oregon, Pennsylvania, Rhode Island, Wisconsin, Wyoming. Some of these States extend this to real estate, others let the tax remain a lien during the life tenure.

In case of contingent remainders these States assess the tax at the highest possible rate with provision for a refund if a lower rate turns out to be due: California, Colorado, Idaho, Illinois, Indiana, New York, Minnesota, and South

Dakota. The provision has been the source of much litigation.

Rhode Island and Wisconsin on the other hand tax the contingent remainder at the lowest possible rate and require adjustment if a higher rate is ultimately due.

Connecticut makes the contingent remainder rate the same as that of the life tenant with provision for ultimate adjustment of any difference on the falling in of the remainder.

In all the States the general principle is the same, the variations being as to when the tax falls due and the rate at which it is imposed.

#### g. EXECUTORS AND THEIR DUTIES.

Nearly all the statutes require the executor or administrator to file a sworn inventory which is made the basis for the appraisal of the estate and the assessment of the tax. They all hold him personally liable for the tax. They all require him to deduct the tax from a money legacy or collect it from the beneficiary, if in property, and forbid him to deliver it until the tax is paid. They all make the tax a lien and provide that the property, or so much thereof as is necessary, may be sold to pay the tax as in case of debts. They all require him to pay the tax to the proper official and secure a receipt which must be produced as a voucher on final accounting. They all provide that no final decree settling his accounts may be granted until it is shown that the tax has been paid or that none is due. Bequests to executors in lieu of commissions are universally taxed where they exceed the statutory compensation for services.

#### h. APPRAISAL.

All of the statutes use the machinery of the Probate Courts for the collection of the tax and most of them



require the judge or Surrogate having jurisdiction to grant letters testamentary or of administration to assess it on appraisal. Some States permit the sworn inventory to stand as the appraisal unless the Treasurer, Comptroller or Tax Commissioner is dissatisfied; but provide for the appointment of an appraiser if there is any question in dispute who proceeds, upon due notice to all parties interested, to appraise the estate at its fair market value, usually the value at the death of the decedent. From the appraisal so made there is always an appeal to the Probate Court which may order a reappraisal or assess the tax and from such decree an appeal lies in the same manner as from other decrees unless special provisions are made as to time, etc. In all these features the statutes are practically identical.

Provisions are also usually made for motions to exempt an estate which is obviously not taxable without the formality of an appraisal.

#### i. VALUATION.

The time when the tax falls due is the time when the value must be fixed but losses in process of administration have so often occurred and beneficiaries so frequently have been assessed upon the transfer for the property they never in fact have received that the recent statutes enacted by Connecticut, Rhode Island and the Federal Government allow a deduction for losses during administration except those due merely to the rise and fall in the price of stocks. This is a relief which the courts cannot give and will doubtless be generally adopted in other States.

#### j. INTEREST, DISCOUNT AND PENALTY.

Following is a synopsis of the provisions of the statutes with regard to rates of interest and discount:

*Federal Tax.*—Due one year after death but the Commissioner may grant an extension not exceeding three years. If not paid within one year and 180 days 6% interest from the expiration of one year added to tax. If tax cannot be determined an amount sufficient to pay it, in opinion of collector may be deposited. This saves all interest unless it proves insufficient. If not sufficient, interest at 10% is charged if not paid within thirty days after notice by collector.

*Arizona.*—Due at death, after 8 months interest at 8% from death, in case of unavoidable delay, 6%. If paid within 8 months, 5% discount.

*Arkansas.*—Due at death, interest at 6% after 6 months, after 12 months 10% penalty in addition to interest, except in case of unavoidable delay when penalty is remitted—no discount.

*California.*—Due at death, no interest until 18 months, after that 10% from date of death, in case of unavoidable delay may be reduced to 7%. If paid within 6 months 5% discount.

*Colorado.*—Due at death, after one year interest at 10% from date of death, discount of 5% if paid within 6 months.

*Connecticut.*—Due 14 months after death; after that interest at 9% but court may extend time of payment. No discount.

*Delaware.*—Taxes payable within 13 months. No provision for interest. Legal rate is 6%. No discount.

*Georgia.*—Due at death, no interest until after 12 months then from date of death. No rate specified. Legal rate 7%.

*Hawaii.*—Due at death. No interest for 18 months; after that 10% from date of death which may be reduced to 7% in case of unavoidable delay. Discount of 5% if paid within one year.

*Idaho.*—Due at death. No interest until after one year;

then 10% reduced to 6% in case of unavoidable delay. Discount of 5% if paid within six months.

*Illinois.*—Taxes due at death and interest at 6% charged from that time unless paid within 6 months when no interest charged and a discount of 5% allowed.

*Indiana.*—Tax due at death. No interest for 18 months; after that 10% from date of death, discount of 15% if paid within one year.

*Iowa.*—At death, no interest for 18 months; after that 8% from date of death.

*Kansas.*—One year from death except gifts in contemplation of death on which tax accrues at date of gift. No provision as to interest. Legal rate is 6%.

*Kentucky.*—Due at death. No interest for 18 months, after that 10% from date of death; may be reduced to 6% in case of unavoidable delay. Discount of 5% if paid within 9 months.

*Louisiana.*—Due 6 months after death from which time 2% a month until paid but court may remit interest in case of litigation or unavoidable delay. No discount.

*Maine.*—Due two years after death, after that 6% interest. No discount.

*Maryland.*—No interest until after 12 months, then 6% from date of death. No discount.

*Massachusetts.*—Due within one year after the executor or administrator qualifies; after that interest is charged. Rate not specified. Legal rate 5%. Discount at rate of 4% per annum if paid before due.

*Michigan.*—Due at death, no interest for 18 months; after that 8%, may be reduced to 6% in case of unavoidable delay. Discount of 5% if paid within one year.

*Minnesota.*—Due at death, no interest charged for one year, after that 7% from date of death, may be reduced to 6% in case of unavoidable delay. No discount.

*Mississippi.*—Due 30 days after notice of amount; after that 8%. No discount.

*Missouri.*—Due at death. No interest for six months, after that 6% from date of death. If not paid within one year executor must file a bond. No discount.

*Montana.*—Due at death. No interest for 10 months, after that 10%, reduced to 7% from 18 months after death in case of unavoidable delay. If paid within 6 months discount of 3%.

*Nebraska.*—Due at death with interest at 7%, but if paid within one year interest rebated. No discount.

*Nevada.*—Due at death, no interest until after 18 months, then 10% from date of death unless unavoidable delay, then 7%. If paid within 6 months, discount of 5%.

*New Hampshire.*—Due two years after executor or administrator qualifies by giving bonds. No interest until then, after that 10%. No discount.

*New Jersey.*—Due at death, no interest for one year, after that 10% from end of year which may be reduced to 6% in case of unavoidable delay. If paid within 6 months 5% discount.

*New Mexico.*—Due 12 months after executor qualifies. Court may extend time. After that interest at legal rate.

*New York.*—Due at date of transfer. No interest for 18 months, after that 10%, which may be reduced to 6% in case of unavoidable delay. Discount of 5% if paid within 6 months.

*North Carolina.*—Due at death, no interest for one year, after that 6% for one year and after two years 10% and 2½% additional for sheriff's fees. If paid within six months a discount of 2½% allowed.

*North Dakota.*—Due at death, no interest for one year, after that 10% from date of accrual, which may be reduced to 6% in case of unavoidable delay, until cause of delay is removed, then 10%. No discount.

*Ohio.*—Due at death. No interest for one year. After that 8%. May be reduced to 5% for unavoidable delay.

Discount of 1% for each full month the payment anticipates the lapse of one year.

*Oklahoma.*— Due at death. Except contingent remainders which are due when beneficiaries get property. 10% interest charged from date when due. No discount.

*Oregon.*— Due at death. No interest for 8 months, then 8% from death, which may be reduced to 6% in case of unavoidable delay. If paid within 8 months discount of 5%.

*Pennsylvania.*— Due at death. No interest for one year, after that 12%, which may be reduced to 6% in case of unavoidable delay. Discount of 5% if paid within 3 months.

*Rhode Island.*— Due 6 months after executor or administrator has filed his bond. After 9 months interest charged at 8% which may be reduced to 6% in case of unavoidable delay. Discount of 4% if paid within the 6 months.

*South Dakota.*— Due at death, payable as soon as determined. No interest until one year from death, then 7% from date of death, which may be reduced to 6% in case of unavoidable delay. No discount.

*Tennessee.*— Due one year after death. No interest until then, after that 6%. If paid within 6 months after death discount of 5%.

*Texas.*— Due at death with interest from that date unless paid within 6 months when interest is rebated. No rate prescribed but legal rate is 6%. No discount.

*Utah.*— Due at death but no interest for 15 months, after that 8% but time may be extended by court or in case of nonresidents by Attorney General.

*Vermont.*— Due two years after death. No rate prescribed for interest after that. Legal rate is 6%.

*Virginia.*— Due within one year. If not paid when due, interest at 6% and a penalty of 20% is added.

*Washington.*— Due at death. No interest for 15 months.

After 15 months 8% except in case of unavoidable delay when 8% is charged only after cause of delay has been removed. No discount.

*West Virginia*.—Due on assessment. After that interest at 4%. No discount.

*Wisconsin*.—Due at death. No interest for 18 months; after that 10% from date of death which may be reduced to 6% in case of unavoidable delay. If paid within one year discount of 5%.

*Wyoming*.—Due at death. Interest at 6% after 6 months from date of death. If paid before 6 months discount of 5%.

All of the statutes make provision for the collection of delinquent taxes by the Attorney General or District Attorney.

#### K. BANKS AND TRUST COMPANIES.

Most of the States make stringent regulations as to the disclosure by banks and trust companies of assets belonging to decedents. They are generally required to notify the State Treasurer or Comptroller ten days before delivering any property to an executor or administrator and they are sometimes required to hold enough of the assets in their hands to pay the tax. The bank or trust company violating these provisions is penalized and held liable for the tax. Some of the States extend this provision to all corporations within the State, making them liable for the tax if they transfer stock of nonresident decedents on their books without notifying the taxing officer.

#### L. THE INTEREST TAXED.

The early statutes imposed inheritance taxes upon the entire estate of the decedent; but all the States but Utah now impose the tax upon the share of each beneficiary.

Rhode Island, in its statute of 1916, which is in many respects a model law, imposes two taxes,—first a tax of one-half of 1% upon the entire estate “for the right to transfer,” and second, graded taxes upon the beneficial shares “for the right to receive.”

## **2. Wherein They Differ.**

As we have seen, the general plan of the statutes is identical, and the procedure for assessment and collection varies more in detail than in essentials. In the matter of rates and exemptions and in the policy adopted as to transfers by nonresident decedents, the divergencies are radical. In the matter of nonresidents the conflicting theories and conflicting statutes often impose oppressive double taxation, on the one hand, while on the other, large estates frequently escape the tax altogether.

### **a. COLLATERALS AND STRANGERS ONLY.**

The early statutes in most of the States taxed only transfers to collaterals and strangers. The following States still preserve this policy and impose no tax on a transfer to direct heirs: Iowa, Maryland, and Texas.

The other States all tax transfers to direct heirs and grade the rates according to degrees of relationship. The bequests to collaterals and strangers are universally taxed at a higher rate than the others.

### **b. NONRESIDENT DECEDENTS.**

Nearly all the States now tax transfers of all property within the State by nonresident decedents.

Michigan and Montana tax all but real estate of non-residents.

Massachusetts, New Hampshire, Rhode Island, and Vermont tax the real estate only.

Arkansas, Connecticut, Indiana, New Jersey, and Oklahoma attempt to distinguish between "tangible" and "intangible" property and tax only the tangibles of non-residents.

#### C. TANGIBLES AND INTANGIBLES.

Pennsylvania arrives at this result by legal construction, its courts holding that the intangibles of nonresidents "follow the domicile of their owner," but that "tangible" assets have a situs within the State apart from their owner, but the act of 1919 does not recognize the distinction.

New York in 1911 enacted the Pennsylvania doctrine into law upon the theory that the other States would follow its lead; but only a few have done so, and New York has finally abandoned the doctrine. By subsequent amendments it taxed stock of nonresident real estate corporations, as it was found that large nonresident real property owners were incorporating their holdings. The whole of a nonresident interest in a copartnership is taxed, and an attempt has been made to define a resident as a person who stays in the State a few months each year. It was the failure of this provision to accomplish the legislative purpose that led to the final abandonment of the distinction between tangibles and intangibles in 1919.

Arkansas, New Jersey, and Oklahoma, while ostensibly accepting the doctrine of "tangibles," define them to include stock in domestic corporations owning tangibles within the State, which practically defines away the definition.

#### D. RECIPROCAL STATUTES.

The plan of attempting to control the policy of sister States by offering rewards or penalizing its inhabitants has been tried in Connecticut and Massachusetts, but the latter State has abandoned the idea. Massachusetts, however,



exempts property of her own resident decedents when it is taxed in another State, unless the tax is less than that of Massachusetts, when the beneficiary must pay the difference. In this she has been followed by West Virginia. This would seem to be a step toward the only possible solution.

Maine exempted transfers of personal property within that State by nonresident decedents who were domiciled in States that do not tax similar transfers by residents of Maine, but this provision was repealed by chapter 266, Laws of 1917.

North Dakota and Wisconsin exempt tangible property of their own residents located in another State if that State makes a like exemption to its own residents as to tangibles in North Dakota and Wisconsin. Whether these provisions are sufficiently reciprocal with those of Maine, Massachusetts and West Virginia has not yet been determined, and the question might prove a source of interesting litigation.

Reciprocal provisions have proved a failure or have not been adopted by a sufficient number of States to be useful.

#### e. DOUBLE TAXATION.

Three-fourths of all the States now tax property of non-residents transferred within the State, and the trend of the new statutes has been in that direction, particularly in the Western States. This confessedly results in double taxation; but the other theory permits large estates to escape without paying any tax. Three-fourths of the States having abolished the legal fiction that movables follow the person as to nonresidents; it remains for each State to follow the example of Massachusetts and West Virginia and relieve its own inhabitants from double taxation by exempting them when they have paid inheritance taxes in another State of an equal or greater amount.

### 3. As Producers of Revenue.

The only legitimate object of taxation is to produce revenue and generally its purpose is to produce as much revenue as possible with the least inconvenience and burden to the community. The prime factors governing the amount of revenue to be derived from inheritance taxes are the rates of tax and exemptions.

#### a. THE RATE.

Generally the rate is small to near relatives and higher as to collaterals and strangers, and increases in proportion to the amount of the bequest or distributive share. The tax on transfers to collaterals and strangers in some States runs as high as 30% on amounts in excess of one million and usually to 15%.

#### b. EXEMPTIONS.

The tendency has been to increase the number and amount of exemptions. This has also tended to reduce the revenue.

In this connection the following excerpt from the report of Comptroller Travis of New York for 1915 is significant:

“The net receipts from inheritance taxes for the fiscal year ended September 30, 1914, was \$11,162,478.40.

“There were 8,947 reports of appraisal examined and filed and 11,608 orders received from the Surrogates’ courts of the several counties of this State.

“The small percentage of estates subject to the graded rates of tax, as shown by the appraisals for the past two years, justifies me in calling to your attention the necessity of reducing both the exemptions allowed on individual transfers as well as the several limitations beyond which the next higher rate of tax becomes effective, if the State is to receive annually from this source of revenue the

amount of tax that the present statute was expected to produce.

“From 1892 till July 11, 1910, individual transferees were not allowed an exemption of any amount whatsoever if the whole estate exceeded \$10,000 and passed to those in the 1% class, or exceeded \$500 and some part thereof passed to persons in the 5% class.

“By the amendment of 1910 a father, mother, widow or minor child was given an exemption of \$5,000. The other persons in the 1% class were allowed an exemption of \$500, and those in the 5% class an exemption of \$100.

“Under the present statute (Chapter 732, Laws of 1911) each person in the 1% class is given an exemption of \$5,000, and those in the 5% class are given an exemption of \$1,000.

“Owing to the present large exemptions, almost every estate between \$10,000 and \$30,000 where the property passes to those in the 1% class is wholly exempt. This amendment eliminates from 25% to 40% of the estates in most of the counties of the State which under the old law would have been taxable.

“The statute still recognizes two classes of taxable persons. Persons related to the decedent as a father, mother, brother, sister, wife or widow of a son or the husband of a daughter, lineal descendants, etc., are referred to as the 1% class, while transfers to more remote relatives, such as uncle, aunt, nephew, niece, cousin, or to persons unrelated, are referred to as the 5% class.

“The present limitations of \$50,000, \$250,000 and \$1,000,000 upon which the corresponding progressive rate per cent. is computed are purely arbitrary amounts placed in the statute without the knowledge since gained that in almost every million dollar estate the individual transfer seldom reaches the maximum of the present 2% rate.”

The amendments to the statute in 1916 by the New York Legislature were adopted in view of the fact that the re-

ceipts had fallen from thirteen millions in 1913 to seven millions in 1916, nearly 50%. The effect of the amendment is already beginning to be felt in increased revenue. The proceeds for 1917 were \$13,791,000 under the 1916 amendment.

### C. FACTS AS TO REVENUE.

The revenue in 1913 produced by the inheritance tax statutes of the several States which then imposed such taxes is shown by the following table:

TABLE SHOWING INHERITANCE TAX RECEIPTS IN STATES  
LEVYING SUCH TAXES IN 1913.

Arkansas . . . . .	\$23,665
California . . . . .	1,586,875
Colorado . . . . .	224,406
Connecticut . . . . .	1,080,483
Delaware . . . . .	8,381
Idaho . . . . .	5,036
Illinois . . . . .	1,612,818
Iowa . . . . .	280,733
Kansas . . . . .	170,234
Kentucky . . . . .	99,224
Louisiana . . . . .	207,004
Maine . . . . .	275,318
Maryland . . . . .	289,332
Massachusetts . . . . .	2,154,407
Michigan . . . . .	360,898
Minnesota . . . . .	678,455
Missouri . . . . .	479,517
Montana . . . . .	8,959
*Nebraska . . . . .	100,000
New Hampshire . . . . .	173,415
New Jersey . . . . .	748,086
New York . . . . .	12,153,189
North Carolina . . . . .	5,265
Oklahoma . . . . .	4,865
Ohio . . . . .	225,507
Oregon . . . . .	74,269
Pennsylvania . . . . .	2,064,300
South Dakota . . . . .	9,781

Tennessee . . . . .	\$210,381
Texas . . . . .	47,574
Utah . . . . .	242,800
Vermont . . . . .	78,593
Virginia . . . . .	43,392
Washington . . . . .	186,231
West Virginia . . . . .	168,234
Wisconsin . . . . .	924,736
Wyoming . . . . .	361
<hr/>	
Total . . . . .	\$27,006,697
<hr/>	

California, Connecticut, Illinois, Massachusetts and Pennsylvania collected a total of \$8,498,883.

Wisconsin, Minnesota, New Jersey, Missouri and Michigan, a total of \$3,191,692, making \$11,690,575 for the ten States, while New York collected \$12,153,189.

The total collections in all the other States totaled only \$3,162,933.

Under increased rates California jumped from \$1,586,000 in 1913 to \$2,783,000 in 1915, and now collects over \$3,000,000. Wisconsin, also, has about doubled her receipts.

Recent amendments have increased the rates and made the penalties more stringent, and much has been done to make the collection of the tax more efficient. Many of the States now make an appropriation for the expenses of collection and provide the collecting officers with adequate legal assistance. Every estate of taxable proportions has astute and vigilant attorneys employed to minimize the tax or evade it if possible. Several of the States have in the last year amended their statutes to authorize the employment of special transfer tax attorneys. New York has over one hundred attorneys so employed, and such States as California, Wisconsin and Illinois, where a comparatively large revenue is secured, are following her example, with

---

\* Estimated.

the result that the increased revenue is out of all proportion to the extra cost.

Moderate rates and efficient provisions for collection would seem to be the recommendation of experience, and though exact statistics are not available, it is safe to say that the amount collected in inheritance taxes is, in 1919, four or five times that derived from this source of revenue by the States and the Federal Government as compared with the receipts for 1913.

An abstract of all the State statutes, with the important sections in full and the rest carefully digested, is given in the Appendix.

## **B.— THE FEDERAL STATUTE.**

### **1. History and Development.**

Inheritance taxes have been imposed by the United States Government only under pressure of emergency caused by war, and have been repealed as soon as that pressure was removed, on the theory that such taxes were primarily a source of revenue tacitly reserved to the State governments for their support. Four times in its history war conditions have produced such taxes. They may be known as the Revolutionary war tax, enacted in 1797 and repealed in 1802; the Civil war tax, enacted in 1862 and repealed in 1870; the Spanish war tax, enacted in 1898 and repealed in 1902; and the present German war tax.

The statute now in force has been twice amended and recently re-enacted. The dates are important. As to persons dying after September 8, 1916, and prior to March 3, 1917, the first statute is in effect. The amendments of March 3, 1917, are in effect until October 3, 1917. The estate of persons dying after that date and before February 24, 1919, are subject to the additional war rates imposed by the amendment of that date. As to persons dying after

February 24, 1919, the new Federal act of that date takes effect.

a. THE REVOLUTIONARY WAR TAX.

This was enacted July 6, 1797, as a stamp duty, the stamps being affixed to receipts given by the legatee to the executor. (Chapter 11, 1 Stat. 527.) The statute closely followed the legacy duty imposed in the mother country. It was paid by the legatee and not out of the estate. The act was repealed as soon as the country somewhat recovered from the war debt pressure, the repealing act being Chapter 17, 2 Stat. 148, June 30, 1802.

It had none of the features of the most recent inheritance tax statutes and was, strictly speaking, more to be classed as a duty or impost than a tax. It imposed a fee of 25 cents on legacies from \$50 to \$100; 50 cents on legacies from \$100 to \$500; and \$1.00 additional for every additional \$500.

b. THE CIVIL WAR TAX.

For sixty years the Federal Government ignored this source of revenue, but was once more driven to it by the conditions in 1862. By Chapter 119, 12 Stat. 433, 485, another inheritance tax was imposed.

This was also a legacy and probate stamp tax, closely following an English model of that date. It involved as well as the tax on the legacy a probate tax on the entire estate.

This statute also was different in theory and in manner of collection from any of the modern inheritance tax statutes.

This tax ranged from 50 cents to \$20 on estates valued at from \$50,000 to \$100,000 and \$10 for every additional \$50,000 or part thereof.

The act was amended in 1864 and 1866, and was repealed July 14, 1870, by Chapter 255, Stat. 1870.

## c. THE SPANISH WAR TAX.

This statute was enacted June 13, 1898 (30 U. S. Stat., p. 464), and was amended March 2, 1901 (31 U. S. Stat., p. 946), to exempt charitable corporations and regulating procedure. It was repealed April 12, 1902, and taxes on charitable bequests collected between 1898 and 1901 were refunded by 32 U. S. Stat., p. 406.

The act was a tax on beneficiaries for the right to receive and was modeled after the pattern of many of the State statutes now in force. It taxed only personal property passing by will, intestate laws or "deed, grant, bargain, sale or gift made or intended to take effect in possession or enjoyment after the death" of the grantor, etc.

It did not tax estates valued at less than \$10,000. When they exceeded that sum a tax was levied on the whole amount at these rates.

TABLE OF RATES UNDER FEDERAL ACT OF 1898

CLASS OR RELATIONSHIP	GRADED RATES OF TAX				
	Up to 25,000	25,000 to 100,000	100,000 to 500,000	500,000 to 1,000,000	In excess of 1,000,000
	<i>Per cen</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>
Lineal issue, lineal ancestor, brother or sister.....	$\frac{1}{2}$	$1\frac{1}{2}$	$1\frac{1}{2}$	$2\frac{1}{2}$	$2\frac{1}{2}$
Descendant of brother or sister.....	$1\frac{1}{2}$	$2\frac{1}{2}$	$3\frac{1}{2}$	$3\frac{1}{2}$	$4\frac{1}{2}$
Aunt or uncle and their descendants.....	$3$	$4\frac{1}{2}$	$6$	$7\frac{1}{2}$	$9$
Brother or sister of grand parents and their descendants.....	$4$	$6$	$8$	$10$	$12$
All others except as below.....	$5$	$7\frac{1}{2}$	$10$	$12\frac{1}{2}$	$15$

Inheritances of the husband or wife were altogether exempt, and by act of 1901 all charitable, religious, educational, etc., bequests were exempted.

These taxes were superimposed over and above the taxes collected by the States, and it will be observed that rates which, when imposed by the States, are denounced as "confiscatory," were charged and collected.



It should be borne in mind, however, that under this tax real estate was exempted altogether, thus reducing the size of all estates liable to the tax, and that contingent remainders were not taxed.

*Vanderbilt v. Eidman*, 196 U. S. 480; 25 S. Ct. 331.

*Herold v. Shanley*, 146 Fed. 20; 76 C. C. A. 478.

*Heberton v. McClain*, 135 Fed. 226.

*Brown v. Kinney*, 137 Fed. 1018.

## 2. The Act of 1916 and Amendments.

Pressure caused by war conditions, particularly the falling off of the taxable imports and the necessary preparations for defense, caused the Federal Government once more to resort to estates as a source of revenue. By the revenue act approved September 8, 1916, the present tax was enacted, and was amended March 3, 1917, by greatly increasing the rates, which run up to 15% on estates in excess of five million. The rates were again increased by the amendments of October, 1917, and yet again by the re-enactment of February 24, 1919.

### a. DOUBTFUL CONSTITUTIONALITY.

The distinguishing feature of the present Federal statute is that it proceeds upon a different theory from all prior Federal inheritance taxes and from that of all but two of the States.

It levies the tax on the entire estate of the decedent without reference to the beneficiaries or their interests. It includes real estate as well as personal property in determining the value of the "net estate" subject to the tax and makes one general exemption of \$50,000, which is to be deducted from any estate before a tax is imposed, as well as all debts, funeral expenses and the like, that are allowed by the laws of the State wherein the estate is administered.

The act of 1916 made no exemptions to charitable, educa-

tional or religious institutions, being regarded as an "estate tax" and not a tax on the transfer to such institutions.

Another unusual feature, and one that seems violative of constitutional principles, is that it makes no provision for notice or a hearing, but, on the contrary, requires that the executor shall notify the collector instead of the collector notifying the executor! This is an anomaly in tax legislation. The obvious defect may, however, be remedied by the Treasury Department, which is empowered to make regulations for the enforcement of the law.

The whole scheme of the law would seem to be to impose oppressive, if not confiscatory, rates on large estates, with no provision for the adjustment of burdens.

It is to be regretted that the Congress did not see fit to re-enact the statute of 1898. This law had been interpreted by the courts, its constitutionality sustained, and its practical workings tested by experience. If it failed to produce sufficient revenue the fault was in extensive exemptions, and also, doubtless, in lack of efficiency in enforcement — and possibly in an exaggerated notion as to the amount of revenue to be derived from the devolution of large estates. The vast bulk of the country's wealth is in the hands of people of moderate means. No tax will produce a large revenue which does not reach the pocketbooks of the masses.

It is "not an inheritance tax." Article IV, Department Regulations (1916). That is to say, the tax is on the right to transmit property from the dead, not on the right to receive it from the dead. It is, therefore, not a tax upon the succession or inheritance, but is imposed upon the estate. No provision is made for adjusting the burden of the tax among the beneficiaries. Under the new regulations the Department has reversed its ruling.

But the right to transmit at death is not a privilege bestowed by the Federal Government. It is not one of the

powers delegated to Congress by the States in the National Constitution.

*Matter of Becker*, 26 Misc. 633; 57 Supp. 940.

If the transfer is by will a right has been exercised by the decedent and is logically taxable; but if no will is made, if the property is distributed by the intestate laws of a state, under what theory can the right to transmit be taxed? A legatee may renounce and thus escape taxation. If a decedent does not exercise the privilege of making a will it is difficult to see how any transfer tax can be imposed by the Federal Government on his estate by reason of its distribution under intestate laws with the operation of which he has no concern, and which the Federal Government does not enact.

The right to transfer necessarily involves a transferee, and in case of intestacy the only privilege exercised is the privilege of receiving.

\*Under the department's ruling the Federal "Estate Tax," as it is termed, comes very near to being a tax on property, and hence unconstitutional, not only as a property tax unequal in its burdens but because not apportioned among the States as a direct tax.

But the State courts must concern themselves with the distribution of the burdens of the tax among the beneficiaries if the tax is to be enforced. Unless the real estate is made to bear its share, unless the specific legatee pays a portion, unless the burden is adjusted between the life tenant and the remainderman, the law will operate oppressively and unconstitutionally.

The apportionment of the tax among the beneficiaries would be difficult if the law attempted it. Apparently specific legacies will escape and the entire tax fall on the

\* NOTE.—This ruling is reversed by the new regulations. See p. 581.

residuary estate. There is no provision for apportioning the tax between the real estate and the personal property, and apparently it is to be collected out of the personalty if there is sufficient to pay it. The regulations of the Treasury Department thus far afford no solution, if a solution is to be had.

#### b. CONSTRUCTION BY THE STATE COURTS.

These views are not unsupported by authority. In *Matter of Bierstadt*, 178 App. Div. 836; 166 Supp. 168, the question at issue was whether the Federal tax was to be deducted from the value of the estate subject to the tax levied by the State of New York. The attorney for the executor appellant urged that the Federal tax was not on the succession but was plainly a tax on property, and therefore was a deduction. The court held that if this was so the Federal tax was *unconstitutional*! The court said:

“Mary S. Bierstadt, deceased, left a will by which she disposed of an estate valued at upwards of two million dollars. Of this estate she disposed of upwards of one million, two hundred thousand dollars by legacies of specific sums, and gave the residue to certain named relatives. No complaint is made of the assessment of the property thus devised so far as concerns the taxability of the several transfers under the State Transfer Tax Law, except that the executors-appellants claim that the tax to be paid under the Federal Revenue Act of 1916, estimated to amount to \$57,309.58, should be deducted from the gross estate left by the testatrix, before the tax due under the laws of the State of New York is calculated. This claim is based upon the proposition that the tax provided for in the Federal Revenue Act is a tax upon the estate, as such, and not upon the transfer of the property under the will and the laws of this State, of which the deceased was a resident.

“A similar claim for the deduction of the succession tax levied under the Federal War Revenue Act of 1898 was decided adversely to the claimant in *Matter of Gihon*, 169 N. Y. 443, wherein it was held that the Federal tax was not a tax upon the property transferred, but one upon the transfer itself, the amount of the tax being measured by the value of the property affected by the transfers. If, therefore, the tax imposed by the Act of 1916 is, like that imposed by the Act of 1898, a tax upon the transfer and not upon the property transferred, the claim of the executors was rightly denied. It is argued, however, that the Federal Revenue Act of 1916 differs radically from the War Revenue Act of 1898, in that under the Act of 1916 the tax is imposed distinctly and unequivocally upon the property transferred, and that by no construction can it be held to be merely a tax upon the transfer of the property. Without expressing an opinion upon this construction of the act, it will suffice to say that if it must be construed as the executors claim that it must be, it would be invalid on constitutional grounds and no tax could lawfully be collected under it. (*Knowlton v. Moore*, 178 N. Y. 41; *Matter of Gihon*, *supra*.) If so, it would be clearly improper to deduct it from the gross estate before estimating the amount of the tax to be paid under the State law.

“So, in either aspect of the law, whether it merely provided for a tax upon the transfer of the property, or provides for a tax upon the property itself which is transferred, the order appealed from is right. It is quite apparent that the executors will be confronted with serious questions which must be decided before they can safely proceed to finally distribute the estate. With those questions, however, we are not now concerned. All we are called upon to decide is that the executors are not entitled to deduct from the gross estate, as an expense of admin-

istration, the estimated tax provided for in the Federal Revenue Act of 1916, before the amount of the tax under the State law is fixed.

“The order appealed from is affirmed with \$10 costs and disbursements.

“All concur.”

Coincident with the decision in the *Bierstadt* case, *Matter of Sherman* was decided by the Third Department (179 App. Div. 497) and was affirmed by the Court of Appeals without opinion (222 N. Y. 540). In this case the court reasoned thus: “The conditions of transfer have been embodied in the statute by the Transfer Tax Law. If the Federal Government may impose an inheritance tax which is entitled to be deducted from the estate prior to the assessment of the State transfer tax, it has interfered with such conditions and has diminished the amount which the State has appropriated as a condition of the transfer by the percentage upon the sum appropriated by the Federal Government. The State transfer tax will thus have become one, not upon the whole estate transmitted, but one upon the whole estate, less the amount of the Federal tax. This lessening of the transfer tax, while not large in the estate at bar, would aggregate a very considerable sum when applied to all the estates subject to tax within the State. The constitutionality of a Federal act entitled to such construction and effect might well be doubted.”

The courts of other States have not been inclined to follow the position of the New York courts on this question. In New Jersey the question arose in *Re Roebeling's Estate*, before the Prerogative Court, 104 Atl. 295, where the court said:

“The highest courts in two of the States have recently decided the question, reaching opposite conclusions. The

Minnesota Supreme Court held that the Federal tax should be deducted. (*State v. Probate Court of Hennepin County* [Minn.], 166 N. W. 125.) The Court of Appeals of New York held to the contrary view. (*In re Sherman Estate, supra.*) The New York Supreme Court allows that its transfer tax is based upon the amounts passing to the respective transferees, but holds to the view that the conditions of transfer, as embodied in its Transfer Tax Act, comprehend the clear market value of the property at the time of the transfer, exclusive of Federal tax, and expressed the opinion that if the Federal Government may impose an inheritance tax which is entitled to be deducted from the estate prior to the assessment of the estate transfer tax, it has interfered with such conditions, and that the constitutionality of a Federal act entitled to such a construction and effect might well be doubted. If the court had acknowledged the Federal tax as levied upon the estate transferred, doubtless a different result would have been reached.

“In the earlier case, *Matter of Gihon, supra*, the Court of Appeals had before it the question whether the Federal legacy tax of 1898 was a deduction. It said:

“ ‘Neither the amount of the State tax, nor the amount of the Federal inheritance tax imposed under the War Revenue Act of 1898, was deductible, because each was a tax, not upon property, but upon succession — that is, a tax on a legatee for the privilege of succeeding to the property — and was payable out of his legacy, not out of the estate’ — a tacit evincement that if the Federal tax had been upon the estate, and not upon the legacies, it would have been deductible from the assets of the estate before computing the State transfer tax. Previous to the decision in the *Gihon* case, the Supreme Court of Massachusetts, in *Hooper v. Shaw*, 176 Mass. 190; 57 N. E. 361, decided that the legacy tax of the War Revenue Act of June 13, 1898 (ch. 448, 30

Stat. 448), should be deducted in ascertaining the State's succession tax. In view of the fact that both Federal and State taxes were imposed upon the same successions, and were payable by the beneficiaries, it is difficult to reconcile the deliverance in that case to the principles of the *Gihon* case. The appraisement upon which the tax was assessed will be reduced by the sum of the Federal tax."

The Minnesota case referred to by the New Jersey court takes the position that the Federal act is constitutional. The court says: "We think the claim that the Federal act imposes a tax upon the estate and not upon the transfer to beneficiaries, and for that reason is inhibited by the Federal constitution, is not well founded. True, the Federal act differs radically from the Minnesota act and imposes the tax upon the 'transfer of the net estate,' but the net estate, as defined by the act, is the net value of the property left for distribution to the beneficiaries after all proper charges, including all charges imposed by the laws of the jurisdiction, have been paid and deducted."

*State v. Probate Court, Hennepin County*, 166 N. W. 125.

The courts of Pennsylvania have also considered the *Bierstadt* case and refused to follow it. In *Knight's Estate* (Pa.), 104 Atl. 765, the court said: "The tax which the Commonwealth exacts is 5% of the clear value of all estate passing from the person dying possessed thereof to any person other than those specifically exempted, and every legal charge against the estate must therefore be deducted before the clear value can be ascertained. Obviously the clear value taxable under the law of this State can only thus be ascertained after the payment of the tax due the United States. Otherwise a legatee, heir or next of kin is paying the Commonwealth a tax upon something that never passed to him. Such a result would be unjust and highly inequi-



table and shocking to one's sense of reason and justice. Indeed, a case might readily be imagined where concurrent taxation at a high rate might absorb the entire estate, which would then become almost like the *hereditas damnosa* of the early Roman law."

But the Pennsylvania statute of 1919 declares the Federal tax not a deduction.

The courts of Connecticut also allow the Federal tax as a deduction and reason thus as to its nature and effect:

"The Federal act of 1916 imposes a tax payable out of the estate before distribution, thus differing from the Federal inheritance tax of 1908, payable by the individual beneficiaries. It is not a tax upon specific legacies nor upon residuary legatees. It is taken from the net estate before the distributive shares are determined, rather than off the distributive shares. Its payment diminishes *pro tanto* the share of each beneficiary. The executor or administrator must pay the tax out of the estate before the shares of the legatees are ascertained. It is an obligation of the estate and payable like any expense which falls under the head of administration expenses. The tax paid is no part of the estate at the time of distribution; it has passed from the estate and the share of the beneficiary is diminished by just so much."

*Corbin v. Townshend*, 92 Conn. 501; 101 A. 834.

The question has subsequently arisen in New York in a different form. The will may direct that the tax be charged upon legacies or paid out of the residuary estate. In the absence of such direction is the tax to be apportioned among all the beneficiaries or paid out of the residuary estate? The court holds that the latter is the alternative, and thus reasons:

“While the act provides for a just and equitable contribution it does not undertake to lay down any specific rule by which such a determination is to be made. Indeed, the act recognizes the right of the transferor to apportion the tax among the beneficiaries and to charge their respective shares as he may see fit to do. Here the will gives no specific directions respecting the apportionment of taxes or other claims. It makes certain specific bequests and legacies, closing with a residuary clause, disposing of the residuary estate. The residue of the estate means what is left after the payment of debts and other charges against the estate and the specific bequests and legacies. There is nothing in the will to indicate that such a tax as this should be apportioned so as to include the specific legatees.”

*Matter of Hamlin*, 185 App. Div. 183.

Surrogate Fowler of New York county arrived at a different result and held that the tax should be assessed proportionately against the specific legatees. This was his reasoning:

“The question is, From what fund or funds is this tax to be paid, and, if it is to be taken from different funds, in what proportion is the deduction from the respective funds to be made? While the act provides that the tax is imposed upon the transfer of the estate, and not upon the transfer of the interests of the respective legatees, it would be obviously unjust to the residuary legatees to deduct the tax *in toto* from the estate in the same manner as administration expenses are deducted. The will of testator was executed before the passage of the revenue act, and there would therefore be no justification for assuming that he contemplated the enactment of such a law and the payment of the tax exclusively out of the shares of the residuary legatees.

“The will being silent upon the question, it should be

decided by the court upon principles of equity and justice, and it would be inequitable to charge the children of the testator, who are residuary legatees, with the payment of this tax while exempting from such payment collateral relatives who are the recipients of substantial testamentary gifts from the testator. It seems, therefore, that the tax should be deducted proportionately from each legacy, and that the amount to be deducted is that proportion of the entire tax assessed against the estate which the individual legacy bears to the entire net estate. By way of illustration, if the entire net estate were \$100,000 there would be an exemption of \$50,000, the tax under the act of 1916 would be \$500, and the proportion of such tax which should be deducted by the executor from a legacy of \$10,000 would be obtained by multiplying 500 by 10,000 and dividing the result by 100,000.

“The ‘net’ estate to be used in computing the proportion of the tax to be paid by a legatee is not the net estate as defined in the revenue act, but the net estate as ascertained under the laws of this State by deducting funeral expenses, administration expenses, and debts from the gross value of the estate.

“As the tax is imposed upon the estate, and not upon the interest of the individual legatee, the executors should adopt the same rule in ascertaining the amount of tax to be deducted from the corpus of the trust fund directed to be held for the life beneficiaries.”

*Matter of Douglass*, 171 Supp. 950.

The opinion of Judge Fowler is here given because the conclusion he reached has appealed to the courts of other States. As far as New York is concerned, however, the law is settled the other way, for *Matter of Hamlin* was recently affirmed by the Court of Appeals (226 N. Y. 407).

Mr. Justice Hogan, writing for the court, in a careful opinion, refers to the discussion in the Ways and Means Committee of the House and quotes from the statement of Chairman Kitchen that the Federal tax is not an inheritance tax but an estate tax that does not concern itself with the distribution among beneficiaries (p. 415). Discussing the 1919 amendments, he says, at page 419: "Counsel for the appellants also calls attention to the amendments made to the law of 1916 by the act of Congress of February, 1919, which in effect provides that the value of the gross estate of the decedent shall include 'to the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess of \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life (§ 6336 $\frac{1}{2}$ c, new § 402);' also amendment to § 6336 $\frac{1}{2}$ j, new § 408, which provides: 'If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds in excess of \$40,000 of such policies bears to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries at the same ratio,' and submits that the Congress required the beneficiaries of insurance policies and of transfers made in contemplation of death to pay a tax on their respective interests computed on the basis of the whole net estate, while under the decision of the Appellate Division in the case at bar all general legatees would receive their legacies in full. Counsel in his brief expressed a doubt as to the constitutionality of such amendment; but such question is not before us, and reference is made to the same only as bearing on the intention of the act of 1916. Viewed from that standpoint, the con-

clusions already expressed as to the act of 1916 remain unchanged. I have deemed it unnecessary to refer to the power of Congress to enact the law under consideration. To one interested in such question the careful and exhaustive opinion of Mr. Justice White in the *Knowlton* case, 178 U. S. 41, will be of interest."

This reference to *Knowlton v. Moore* can only be construed as a very strong intimation that, in the opinion of the New York Court of Appeals, the Federal Estate tax, at least as to many of its most important features, is unconstitutional, and will so be held when the question comes before the Supreme Court of the United States.

#### C. EXPERT OPINION.

The Supreme Court of the United States will ultimately have the task of reconciling these conflicting authorities and pronouncing upon the constitutionality and application of the statute. Until then those charged with the enforcement of the law must do the best they can. In the *Trust Company Magazine* for July, 1917, Mr. Arthur W. Blakemore, a well-recognized authority, and one of the authors of "Blakemore & Bankroft" on Inheritance Taxation, discusses the constitutionality of the Federal statute as follows:

"In the midst of a great war it would be unpatriotic to attempt to attack the constitutionality of the law. No court would sustain such an objection presumably as in time of war nothing is unconstitutional as a practical matter. But after peace is declared it is reasonable to suppose that the law may be attacked and with fair chance of success. Its outstanding feature is that it is imposed on the estate itself, instead of on the shares of each beneficiary, and at a progressive rate. This was exactly the sort of tax which Congress attempted to impose in 1898, but which the Su-

preme Court construed as applying to each distributive share, giving as one of its reasons the crass injustice of the other view. The court remarks:

“ ‘The gross inequalities which must inevitably result from the admission of this theory are readily illustrated. Thus a person dying, and leaving an estate of \$10,500, bequeathes to a hospital \$10,000. The rate of tax would be 5% and the amount of tax \$500. Another person dies at the same time, leaves an estate of \$1,000,000, and bequeathes \$10,000 to the same institution. The rate of tax would be 12½% and the amount of the tax \$1,250. It would thus come to pass that the same person, occupying the same relation and taking in the same character two equal sums from two different persons, would pay in the one case more than twice the tax that he would in the other.

*Knowlton v. Moore*, 178 U. S. 41, 76, 983; 20 S. Ct. Rep. 747.

“The act of 1898 was sufficiently ambiguous in its terms to enable the court to avoid by construction this result. There is no possible ambiguity in this respect in the act of 1916. It is clearly and unmistakably a tax with progressive rates based on the size of the estate alone. The Supreme Court will be forced to decide squarely the validity of such a method, and judging by its past utterances the result would seem extremely doubtful. It should be borne in mind that it is commonly supposed that inheritance taxes are laid on the right to receive rather than on the right to transmit, that there is already sufficient authority in this country that a progressive rate dependent on the size of the estate is void, and that the provisions of the Federal constitution are no weaker than those of the State constitutions on which these decisions in the State courts are based. On the other hand, the court may take the view that Congress may, if it pleases, levy a tax on the right to transmit rather than on

the right to receive, and that the matter of injustice and inequality is a legislative rather than a judicial question.

“Another objection made to the law is that it is a direct tax on the property of the estate, and should therefore be apportioned among the several States. The language of the act is that the tax is imposed on the ‘transfer’ and is fixed by the value of the net estate. It should be noted, however, that this tax certainly comes nearer being a direct property tax than any other yet passed in this country. The official returns required of executors ask only for a detailed property statement like any direct tax return.”

### 3. Rates of Tax.

#### a. UNDER ACT OF SEPT. 8, 1916.

The rates imposed by the act of 1916 upon net estates of those dying after September 8 of that year and prior to March 3, 1917, are as follows:

Up to \$50,000 — 1 per cent.....	\$500
On the next \$100,000 — 2 per cent.....	2,000
On the next \$100,000 — 3 per cent.....	3,000
On the next \$200,000 — 4 per cent.....	8,000
On the next \$550,000 — 5 per cent.....	27,500
On the next \$1,000,000 — 6 per cent.....	60,000
On the next \$1,000,000 — 7 per cent.....	70,000
On the next \$1,000,000 — 8 per cent.....	80,000
On the next \$1,000,000 — 9 per cent.....	90,000
On all amounts in excess of \$5,000,000 ten per cent.	

#### b. UNDER AMENDMENT OF MARCH 3, 1917.

The rates established by the amendment of March 3, 1917, on net estates of those dying after that date are as follows:

Up to \$50,000 — $1\frac{1}{2}$ per cent.....	\$750
On the next \$100,000 — 3 per cent.....	3,000
On the next \$100,000 — $4\frac{1}{2}$ per cent.....	4,500
On the next \$200,000 — 6 per cent.....	12,000
On the next \$550,000 — $7\frac{1}{2}$ per cent.....	41,250
On the next \$1,000,000 — 9 per cent.....	90,000
On the next \$1,000,000 — $10\frac{1}{2}$ per cent.....	105,000
On the next \$1,000,000 — 12 per cent.....	120,000
On the next \$1,000,000 — $13\frac{1}{2}$ per cent.....	135,000
On all amounts in excess of \$5,000,000 fifteen per cent.	

### c. ADDITIONAL WAR TAX AFTER OCT. 3, 1917.

Title IX of the War Revenue Act of October 3, 1917, imposes the following *in addition* to those above:

Upon the transfer of each net estate of any decedent dying after the passage of this Act: a tax equal to the following percentages of its value:

	Per cent
Net Estate not excess of \$50,000.....	$\frac{1}{2}$
Exceeds \$50,000 not over \$150,000.....	1
“ 150,000 “ “ 250,000.....	$1\frac{1}{2}$
“ 250,000 “ “ 450,000.....	2
“ 450,000 “ “ 1,000,000.....	$2\frac{1}{2}$
“ 1,000,000 “ “ 2,000,000.....	3
“ 2,000,000 “ “ 3,000,000.....	$3\frac{1}{2}$
“ 3,000,000 “ “ 4,000,000.....	4
“ 4,000,000 “ “ 5,000,000.....	$4\frac{1}{2}$
“ 5,000,000 “ “ 8,000,000.....	5
“ 8,000,000 “ “ 10,000,000.....	7
“ 10,000,000 .....	10

No tax shall be paid on the transfer of the net estate of any decedent dying while serving in the military or naval forces of the United States, during the continuance of the present war, or if death results from injuries received or disease contracted in such service within one year after the termination of such war.



## d. TABULATION OF RATES.

Following is a tabulation of all rates under the Federal act and its successive amendments, including the new rates in force February 24, 1919:

Blocks	Act of Sept. 8, 1916	Amended March 3, 1917	Amended Oct. 3, 1917	Revenue Act of 1919
Net estate not exceeding \$50,000	1%	1½%	2%	1%
Net estate \$50,000—\$150,000	2%	3%	4%	2%
Net estate \$150,000—\$250,000	3%	4½%	6%	3%
Net estate \$250,000—\$450,000	4%	6%	8%	4%
Net estate \$450,000—\$750,000	5%	7½%	10%	6%
Net estate \$750,000—\$1,000,000	5%	7½%	10%	8%
Net estate \$1,000,000—\$1,500,000	6%	9%	12%	10%
Net estate \$1,500,000—\$2,000,000	6%	9%	12%	12%
Net estate \$2,000,000—\$3,000,000	7%	10½%	14%	14%
Net estate \$3,000,000—\$4,000,000	8%	12%	16%	16%
Net estate \$4,000,000—\$5,000,000	9%	13½%	18%	18%
Net estate \$5,000,000—\$8,000,000	10%	15%	20%	20%
Net estate \$8,000,000—\$10,000,000	10%	15%	22%	22%
Net estate exceeding \$10,000,000	10%	15%	25%	25%

## I.

## THE STATUTES.

## 4. The Act of 1916.

The Federal estate tax, in effect September 8, 1916, is as follows:

SEC. 200. That when used in this title —

The term “person” includes partnerships, corporations, and associations;

The term “United States” means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term “executor” means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term “collector” means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the dis-

trict in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue at Baltimore, Maryland.

SEC. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

One per centum of the amount of such net estate not in excess of \$50,000;

Two per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

Three per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Four per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Five per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Six per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

Seven per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Eight per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Nine per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000; and

Ten per centum of the amount by which such net estate exceeds \$5,000,000.

SEC. 202. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated:

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate.

(b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death, without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title; and

(c) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent.

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (b) of this section, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

SEC. 203. That for the purpose of the tax the value of the net estate shall be determined —

(a) In the case of a resident, by deducting from the value of the gross estate —

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and

(2) An exemption of \$50,000;

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States that proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated. But no deductions shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section two hundred and five the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

SEC. 204. That the tax shall be due one year after the decedent's death. If the tax is paid before it is due a discount at the rate of five per centum per annum, calculated from the time payment is made to the date when the tax is due, shall be deducted. If the tax is not paid within ninety days after it is due interest at the rate of ten per centum per annum from the time of the decedent's death shall be added as part of the tax, unless because of claims against the estate, necessary litigation, or other unavoidable delay the collector finds that the tax can not be determined, in which case the interest shall be at the rate of six per centum

per annum from the time of the decedent's death until the cause of such delay is removed, and thereafter at the rate of ten per centum per annum. Litigation to defeat the payment of the tax shall not be deemed necessary litigation.

SEC. 205. That the executor, within thirty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by the regulations made under this title, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section two hundred and three; (c) the value of the net estate of the decedent as defined in section two hundred and three; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases of estates subject to the tax or where the gross estate at the death of the decedent exceeds \$60,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner of Internal Revenue shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

SEC. 206. That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section two hundred and five, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner of Internal Revenue shall assess the tax thereon.

SEC. 207. That the executor shall pay the tax to the collector or deputy collector. If for any reason the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner of Internal Revenue shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid the commissioner shall notify the executor of the amount of such excess. From the time of such notification to the time of the final payment of such excess part of the tax, interest shall be added thereto at the rate of ten per centum per annum, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

SEC. 208. That if the tax herein imposed is not paid within sixty days after it is due, the collector shall, unless there is reasonable cause for further delay, commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From

the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

SEC. 209. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

If the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) and if the tax in respect thereto is not paid when due, the transferee or trustee shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold

by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

SEC. 210. That whoever knowingly makes any false statement in any notice or return required to be filed by this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

Whoever fails to comply with any duty imposed upon him by section two hundred and five, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, fails to exhibit the same upon request to the Commissioner of Internal Revenue or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 211. That all administrative, special, and general provisions of law, including the laws in relation to the assessment and collection of taxes, not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions.

SEC. 212. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make such regulations, and prescribe and require the use of such books and forms, as he may deem necessary to carry out the provisions of this title.

### **5. Amendment of March 3, 1917.**

SEC. 300. That section two hundred and one, Title II, of the Act entitled "An Act to increase the revenue, and for



other purposes," approved September eighth, nineteen hundred and sixteen, be, and the same is hereby, amended to read as follows:

"SEC. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

One and one-half per centum of the amount of such net estate not in excess of \$50,000;

Three per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

Four and one-half per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Six per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Seven and one-half per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Nine per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

Ten and one-half per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Twelve per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Thirteen and one-half per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000; and

Fifteen per centum of the amount by which such net estate exceeds \$5,000,000."

SEC. 301. That the tax on the transfer of the net estate of decedents dying between September eighth, nineteen hun-

dred and sixteen, and the passage of this Act shall be computed at the rates originally prescribed in the Act approved September eighth, nineteen hundred and sixteen.

#### **6. Amendment of October 3, 1917.**

SEC. 900. That in addition to the tax imposed by section two hundred and one of the Act entitled “An Act to increase the revenue, and for other purposes,” approved September eighth, nineteen hundred and sixteen, as amended—

(a) A tax equal to the following percentages of its value is hereby imposed upon the transfer of each net estate of every decedent dying after the passage of this Act, the transfer of which is taxable under such section (the value of such net estate to be determined as provided in Title II of such Act of September eighth, nineteen hundred and sixteen):

One-half of one per centum of the amount of such net estate not in excess of \$50,000;

One per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

One and one-half per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Two per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Two and one-half per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Three per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

Three and one-half per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Four per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Four and one-half per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

Five per centum of the amount by which such net estate exceeds \$5,000,000 and does not exceed \$8,000,000;

Seven per centum of the amount by which such net estate exceeds \$8,000,000 and does not exceed \$10,000,000; and

Ten per centum of the amount by which such net estate exceeds \$10,000,000.

SEC. 901. That the tax imposed by this title shall not apply to the transfer of the net estate of any decedent dying while serving in the military or naval forces of the United States, during the continuance of the war in which the United States is now engaged, or if death results from injuries received or disease contracted in such service, within one year after the termination of such war. For the purposes of this section the termination of the war shall be evidenced by the proclamation of the President.

## **7. The Present Statute and Treasury Department Regulations.**

The new Federal act of 1918-19, in force as to estates of all persons dying on or after February 25, 1919, with the Official Regulations of the Treasury Department issued and in effect August 8, 1919, are as follows:

## **REGULATIONS.**

### **ESTATE, TAX.**

[Except as otherwise specified, the section references are to the Revenue Act of 1918.]

SEC. 400. That when used in this title —

The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate

is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 401. That (in lieu of the tax imposed by Title II of the Revenue Act of 1916, as amended, and in lieu of the tax imposed by Title IX of the Revenue Act of 1917) a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 403) is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or non-resident of the United States:

1 per centum of the amount of the net estate not in excess of \$50,000;

2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$150,000;

3 per centum of the amount by which the net estate exceeds \$150,000 and does not exceed \$250,000;

4 per centum of the amount by which the net estate exceeds \$250,000 and does not exceed \$450,000;

6 per centum of the amount by which the net estate exceeds \$450,000 and does not exceed \$750,000;

8 per centum of the amount by which the net estate exceeds \$750,000 and does not exceed \$1,000,000;

10 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;

12 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;

14 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

16 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

18 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;

20 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$8,000,000;

22 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$10,000,000; and

25 per centum of the amount by which the net estate exceeds \$10,000,000.

The taxes imposed by this title or by Title II of the Revenue Act of 1916 (as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917) or by Title IX of the Revenue Act of 1917, shall not apply to the transfer of the net estate of any decedent who has died or may die while serving in the military or naval forces of the United States in the present war or from injuries received or disease contracted while in such service, and any such tax collected upon such transfer shall be refunded to the executor.

ARTICLE 1. NEITHER A PROPERTY NOR A LEGACY TAX.—The Federal estate tax is imposed upon the transfer of the net estate, determined in the manner prescribed, of every person dying after September 8, 1916. The tax is not laid upon the property, but upon its transfer from the decedent to others. The subject of tax is the transfer of the entire net estate, not any particular legacy, devise, or distributive share. It is not an individual inheritance tax. The value of the separate interests and the relationship of the beneficiary to the decedent have no bearing upon the question of liability or the extent thereof. The transfer of property is taxable, although it escheats to the State for lack of heirs.

ART. 2. NATURE OF TRANSFERS.—The statute embraces transfers by will or under the intestate laws, and also transfers made by the decedent in his lifetime, when made in contemplation of death or intended to take effect in possession or enjoyment at or after his death. The statute also enumerates certain special cases not strictly of either character just described. The practical test of the existence of a taxable transfer is whether the statute directs that the property in question be included in the gross estate.

ART. 3. THE VARIOUS STATUTES.—The estate tax was first imposed by the Act of September 8, 1916. This law was amended by the Act of March 3, 1917 (Title III), and the Act of October 3, 1917 (Title IX). These two statutes increased the rate of tax. The Revenue Act of 1918 (Title IV), which became effective on February 25, 1919, supplants all prior acts as to the estates of decedents dying on or after that date, but continues many of the provisions of the earlier acts with reference to the estates of decedents dying before that date. The Revenue Act of 1918 makes extensive changes in the former acts, both as to the rate of tax and otherwise. It is herein referred to as "the statute." References to other statutes are specific.

## ESTATES SUBJECT TO TAX.

ART. 4. DESCRIPTION OF TAXABLE ESTATES.—The tax is imposed in the case of the estate of “every decedent,” although, by reason of an exemption, the net estate of a resident decedent, in order to be taxable, must exceed \$50,000. (See Sec. 403 (a) 4.) The estate of a nonresident decedent, however, is taxable if any part of it is situated in the United States. The statute takes no account of the citizenship of the decedent, but prescribes different rules according to whether the decedent was a “resident” or a “nonresident” of the United States. A person residing in Italy is a “nonresident,” for the purpose of the tax, although a citizen of the United States; a person residing in the United States is a “resident,” although a citizen of Italy. A “resident” is one who at the time of his death resided in the States, the Territories of Alaska or Hawaii, or the District of Columbia. All other persons are “nonresidents.” Persons residing in Porto Rico or the Philippine Islands are “nonresidents.”

ART. 5. DEFINITION OF “RESIDENT.”—A person is a “resident” of the United States, for the purposes of this tax, only in case he had a *domicile* therein at the time of his death. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal. A decedent who died while abroad will be presumed to be a nonresident, and the burden of proving the contrary rests upon the executor.

## DETERMINATION OF TAX LIABILITY.

ART. 6. MANNER OF DETERMINING LIABILITY.—The first step in the determination of tax liability is to ascertain the value

of the decedent's gross estate in the manner prescribed by law. (See Arts. 12 to 36.) The second step is to deduct from this value certain amounts specified by law in order to arrive at the value of the net estate. (See Arts. 37 to 64.) The third step is to obtain the sum of certain percentages of the value of successive portions of the net estate, as provided by the applicable taxing act. (See Arts. 7, 8.)

**ART. 7. RATES OF TAX.**—The amount of tax is obtained by finding the sum of certain percentages of the value of the net estate according to the provisions of the applicable taxing act.

There are four rates of tax imposed, respectively, by the Revenue Act of 1916, the amendment thereto of March 3, 1917, the Revenue Act of 1917, and the Revenue Act of 1918. In the case of each act the rates contained therein are applicable to the estates of decedents who died on or after the effective date of the act and prior to the effective date of the next succeeding act. A table of the four sets of rates is given below:

RATES OF ESTATE TAX.

Blocks of net estate			1	2	3	4
Exceeding	Not exceed- ing	Amount of block	Act of 1916 (effective Sept. 9, 1916).	Amend- ment of Mar. 3 1917 (effective Mar. 3 1917).	Act of 1917 (effective Oct. 4, 1917).	Act of 1918 (effective Feb. 25, 1919).
			<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>	<i>Per cent</i>
.....	\$50,000	\$50,000	1	1½	2	1
\$50,000	150,000	100,000	2	3	4	2
150,000	250,000	100,000	3	4½	6	3
250,000	450,000	200,000	4	6	8	4
450,000	750,000	300,000	5	7½	10	6
750,000	1,000,000	250,000	5	7½	10	8
1,000,000	1,500,000	500,000	6	9	12	10
1,500,000	2,000,000	500,000	6	9	12	12
2,000,000	3,000,000	1,000,000	7	10½	14	14
3,000,000	4,000,000	1,000,000	8	12	16	16
4,000,000	5,000,000	1,000,000	9	13½	18	18
5,000,000	6,000,000	1,000,000	10	15	20	20
6,000,000	7,000,000	1,000,000	10	15	20	20
7,000,000	8,000,000	1,000,000	10	15	20	20
8,000,000	9,000,000	1,000,000	10	15	22	22
9,000,000	10,000,000	1,000,000	10	15	22	22
10,000,000	.....	.....	10	15	25	25

The rates given by the different acts, as set forth above, apply to the estates of decedents dying within the following dates:

Column 1, Revenue Act of 1916, effective Sept. 9, 1916, to Mar. 2, 1917, inclusive.

Column 2, amendment of Mar. 3, 1917, effective Mar. 3, 1917, to Oct. 3, 1917, inclusive.

Column 3, Revenue Act of 1917, effective Oct. 4, 1917, to Feb. 24, 1919, inclusive.

Column 4, Revenue Act of 1918, effective on and after Feb. 25, 1919.

ART. 8. COMPUTATION OF TAX.—For the purpose of computing the tax, the net estate is divisible into blocks, each block being taxed at a different and increasing rate. The preceding table gives the amount of the various blocks and the applicable rate of tax under each of the taxing acts. For example, the tax upon the net estate of \$1,240,000 of a decedent dying on or after February 25, 1919, would be computed as follows:

Amount of first block . . . .	\$50,000 at 1 per cent	\$500
Amount of second block . . .	100,000 at 2 per cent	2,000
Amount of third block . . . .	100,000 at 3 per cent	3,000
Amount of fourth block . . . .	200,000 at 4 per cent	8,000
Amount of fifth block . . . .	300,000 at 6 per cent	18,000
Amount of sixth block . . . .	250,000 at 8 per cent	20,000
Remainder . . . . .	240,000 at 10 per cent	24,000

---

Total net estate . . . . .	\$1,240,000	Total tax . . . .	\$75,500
----------------------------	-------------	-------------------	----------

There is subjoined a table for ascertaining the tax without the detailed computation given above. An illustration of its use is as follows: The net estate of a decedent dying on or after February 25, 1919, amounts to \$1,240,000. By reference to the table it will be seen that the last complete block prior to this amount is \$1,000,000, and that the total tax on a million dollars under the rates in force amounts to \$51,500. Upon the remainder of the estate, \$240,000, the



tax is computed at the rate contained in the following line, or at 10 per cent. The tax on this amount is consequently \$24,000. The following result is thus obtained:

Total tax on .....	\$1,000,000	\$51,500
Tax on .....	240,000	24,000
	<hr/>	<hr/>
Total . . . . .	\$1,240,000	\$75,500

TABLE FOR COMPUTING ESTATE TAX.

Net estate		Date of Death							
		1	2	3	4				
Exceeding—	Not ex- ceeding—	Sept. 9, 1915, to Mar. 2, 1917, inclusive (Revenue Act of 1916).		Mar. 3, 1917, to Oct. 3, 1917, inclusive (Amendment).		Oct. 4, 1917, to Feb. 24, 1919, inclusive (Revenue Act of 1917).		On and after Feb. 25, 1919, (Revenue Act of 1918).	
		Rate (per cent)	Tax	Total	Rate (per cent)	Tax	Total	Rate (per cent)	Total
.....	\$50,000	1	\$500	\$500	1½	\$750	\$1,000	1	\$500
.....	150,000	2	2,000	2,500	3	3,000	3,750	2	2,000
.....	250,000	3	3,000	5,500	4½	4,500	8,250	3	3,000
.....	350,000	4	8,000	13,500	6	12,000	20,250	4	8,000
.....	450,000	5	15,000	28,500	7½	22,500	42,750	6	18,000
.....	550,000	5	12,500	41,000	7½	18,750	61,500	6	20,000
.....	650,000	6	30,000	71,000	9	45,000	106,500	8	50,000
.....	750,000	6	30,000	101,000	9	45,000	151,500	10	101,500
.....	850,000	7	70,000	171,000	10½	105,000	268,500	12	161,500
.....	950,000	8	80,000	251,000	12	120,000	373,500	14	201,500
.....	1,050,000	9	90,000	341,000	13½	135,000	511,500	16	301,500
.....	1,150,000	9	90,000	441,000	13½	135,000	661,500	18	361,500
.....	1,250,000	10	100,000	541,000	15	150,000	811,500	20	401,500
.....	1,350,000	10	100,000	641,000	15	150,000	961,500	20	401,500
.....	1,450,000	10	100,000	741,000	15	150,000	1,111,500	22	461,500
.....	1,550,000	10	100,000	841,000	15	150,000	1,261,500	22	461,500
.....	1,650,000	10	100,000	941,000	15	150,000	1,411,500	25	561,500
.....	1,750,000	10	100,000	1,041,000	15	150,000	1,561,500	25	561,500
.....	1,850,000	10	100,000	1,141,000	15	150,000	1,711,500	25	561,500
.....	1,950,000	10	100,000	1,241,000	15	150,000	1,861,500	25	561,500
.....	2,050,000	10	100,000	1,341,000	15	150,000	2,011,500	25	561,500
.....	2,150,000	10	100,000	1,441,000	15	150,000	2,161,500	25	561,500
.....	2,250,000	10	100,000	1,541,000	15	150,000	2,311,500	25	561,500
.....	2,350,000	10	100,000	1,641,000	15	150,000	2,461,500	25	561,500
.....	2,450,000	10	100,000	1,741,000	15	150,000	2,611,500	25	561,500
.....	2,550,000	10	100,000	1,841,000	15	150,000	2,761,500	25	561,500
.....	2,650,000	10	100,000	1,941,000	15	150,000	2,911,500	25	561,500
.....	2,750,000	10	100,000	2,041,000	15	150,000	3,061,500	25	561,500
.....	2,850,000	10	100,000	2,141,000	15	150,000	3,211,500	25	561,500
.....	2,950,000	10	100,000	2,241,000	15	150,000	3,361,500	25	561,500
.....	3,050,000	10	100,000	2,341,000	15	150,000	3,511,500	25	561,500
.....	3,150,000	10	100,000	2,441,000	15	150,000	3,661,500	25	561,500
.....	3,250,000	10	100,000	2,541,000	15	150,000	3,811,500	25	561,500
.....	3,350,000	10	100,000	2,641,000	15	150,000	3,961,500	25	561,500
.....	3,450,000	10	100,000	2,741,000	15	150,000	4,111,500	25	561,500
.....	3,550,000	10	100,000	2,841,000	15	150,000	4,261,500	25	561,500
.....	3,650,000	10	100,000	2,941,000	15	150,000	4,411,500	25	561,500
.....	3,750,000	10	100,000	3,041,000	15	150,000	4,561,500	25	561,500
.....	3,850,000	10	100,000	3,141,000	15	150,000	4,711,500	25	561,500
.....	3,950,000	10	100,000	3,241,000	15	150,000	4,861,500	25	561,500
.....	4,050,000	10	100,000	3,341,000	15	150,000	5,011,500	25	561,500
.....	4,150,000	10	100,000	3,441,000	15	150,000	5,161,500	25	561,500
.....	4,250,000	10	100,000	3,541,000	15	150,000	5,311,500	25	561,500
.....	4,350,000	10	100,000	3,641,000	15	150,000	5,461,500	25	561,500
.....	4,450,000	10	100,000	3,741,000	15	150,000	5,611,500	25	561,500
.....	4,550,000	10	100,000	3,841,000	15	150,000	5,761,500	25	561,500
.....	4,650,000	10	100,000	3,941,000	15	150,000	5,911,500	25	561,500
.....	4,750,000	10	100,000	4,041,000	15	150,000	6,061,500	25	561,500
.....	4,850,000	10	100,000	4,141,000	15	150,000	6,211,500	25	561,500
.....	4,950,000	10	100,000	4,241,000	15	150,000	6,361,500	25	561,500
.....	5,050,000	10	100,000	4,341,000	15	150,000	6,511,500	25	561,500
.....	5,150,000	10	100,000	4,441,000	15	150,000	6,661,500	25	561,500
.....	5,250,000	10	100,000	4,541,000	15	150,000	6,811,500	25	561,500
.....	5,350,000	10	100,000	4,641,000	15	150,000	6,961,500	25	561,500
.....	5,450,000	10	100,000	4,741,000	15	150,000	7,111,500	25	561,500
.....	5,550,000	10	100,000	4,841,000	15	150,000	7,261,500	25	561,500
.....	5,650,000	10	100,000	4,941,000	15	150,000	7,411,500	25	561,500
.....	5,750,000	10	100,000	5,041,000	15	150,000	7,561,500	25	561,500
.....	5,850,000	10	100,000	5,141,000	15	150,000	7,711,500	25	561,500
.....	5,950,000	10	100,000	5,241,000	15	150,000	7,861,500	25	561,500
.....	6,050,000	10	100,000	5,341,000	15	150,000	8,011,500	25	561,500
.....	6,150,000	10	100,000	5,441,000	15	150,000	8,161,500	25	561,500
.....	6,250,000	10	100,000	5,541,000	15	150,000	8,311,500	25	561,500
.....	6,350,000	10	100,000	5,641,000	15	150,000	8,461,500	25	561,500
.....	6,450,000	10	100,000	5,741,000	15	150,000	8,611,500	25	561,500
.....	6,550,000	10	100,000	5,841,000	15	150,000	8,761,500	25	561,500
.....	6,650,000	10	100,000	5,941,000	15	150,000	8,911,500	25	561,500
.....	6,750,000	10	100,000	6,041,000	15	150,000	9,061,500	25	561,500
.....	6,850,000	10	100,000	6,141,000	15	150,000	9,211,500	25	561,500
.....	6,950,000	10	100,000	6,241,000	15	150,000	9,361,500	25	561,500
.....	7,050,000	10	100,000	6,341,000	15	150,000	9,511,500	25	561,500
.....	7,150,000	10	100,000	6,441,000	15	150,000	9,661,500	25	561,500
.....	7,250,000	10	100,000	6,541,000	15	150,000	9,811,500	25	561,500
.....	7,350,000	10	100,000	6,641,000	15	150,000	9,961,500	25	561,500
.....	7,450,000	10	100,000	6,741,000	15	150,000	10,111,500	25	561,500
.....	7,550,000	10	100,000	6,841,000	15	150,000	10,261,500	25	561,500
.....	7,650,000	10	100,000	6,941,000	15	150,000	10,411,500	25	561,500
.....	7,750,000	10	100,000	7,041,000	15	150,000	10,561,500	25	561,500
.....	7,850,000	10	100,000	7,141,000	15	150,000	10,711,500	25	561,500
.....	7,950,000	10	100,000	7,241,000	15	150,000	10,861,500	25	561,500
.....	8,050,000	10	100,000	7,341,000	15	150,000	11,011,500	25	561,500
.....	8,150,000	10	100,000	7,441,000	15	150,000	11,161,500	25	561,500
.....	8,250,000	10	100,000	7,541,000	15	150,000	11,311,500	25	561,500
.....	8,350,000	10	100,000	7,641,000	15	150,000	11,461,500	25	561,500
.....	8,450,000	10	100,000	7,741,000	15	150,000	11,611,500	25	561,500
.....	8,550,000	10	100,000	7,841,000	15	150,000	11,761,500	25	561,500
.....	8,650,000	10	100,000	7,941,000	15	150,000	11,911,500	25	561,500
.....	8,750,000	10	100,000	8,041,000	15	150,000	12,061,500	25	561,500
.....	8,850,000	10	100,000	8,141,000	15	150,000	12,211,500	25	561,500
.....	8,950,000	10	100,000	8,241,000	15	150,000	12,361,500	25	561,500
.....	9,050,000	10	100,000	8,341,000	15	150,000	12,511,500	25	561,500
.....	9,150,000	10	100,000	8,441,000	15	150,000	12,661,500	25	561,500
.....	9,250,000	10	100,000	8,541,000	15	150,000	12,811,500	25	561,500
.....	9,350,000	10	100,000	8,641,000	15	150,000	12,961,500	25	561,500
.....	9,450,000	10	100,000	8,741,000	15	150,000	13,111,500	25	561,500
.....	9,550,000	10	100,000	8,841,000	15	150,000	13,261,500	25	561,500
.....	9,650,000	10	100,000	8,941,000	15	150,000	13,411,500	25	561,500
.....	9,750,000	10	100,000	9,041,000	15	150,000	13,561,500	25	561,500
.....	9,850,000	10	100,000	9,141,000	15	150,000	13,711,500	25	561,500
.....	9,950,000	10	100,000	9,241,000	15	150,000	13,861,500	25	561,500
.....	10,050,000	10	100,000	9,341,000	15	150,000	14,011,500	25	561,500

## MILITARY EXEMPTION.

ART. 9. EXEMPT ESTATES.—The estates of persons dying while actually serving in the military or naval forces of the United States in the present war with Germany are exempt from tax. The date of the termination of the war, for the purpose of this tax, is that fixed by proclamation of the President. An estate is also exempt if a person so serving dies after leaving the service, provided his death is directly traceable to injuries received, or disease contracted, while in such service. The term “military or naval forces of the United States” includes, among other units, the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, and the Navy Nurse Corps, Female. This exemption applies to any estate tax imposed, whether by the Revenue Act of 1916 or subsequent statutes. If the tax has been collected, the executor should make claim for refund. For procedure in the case of claims for refunds, see Article 11.

ART. 10. EXEMPTION MUST BE PROVED.—In every case where the exemption is claimed the right must be proved by the executor. Formal claim for military exemption on Form 793, accompanied by supporting evidence, should be filed with the 60-day notice, or as soon thereafter as the necessary evidence may be secured, and in any case not later than one year after the decedent's death. Where the decedent died while actually serving in the military or naval forces during the war with Germany, the evidence in support of the claim should consist of a certificate stating the occurrence of death under those circumstances, issued, in the case of a soldier, by The Adjutant General, in the case of a sailor by the Chief of the Bureau of Navigation, and in the case of a marine by the Commandant.

Where the decedent died while serving in the military or naval forces, but after the termination of the war with Germany, there should be submitted:

- (1) Certificate of The Adjutant General, Chief of Bureau

of Navigation, or commanding officer as above, stating the occurrence of death while in the service, and the cause of death.

(2) Affidavits or other evidence to show that the death resulted from injuries received, or disease contracted, while serving in the military or naval forces during the war with Germany.

Where the decedent died after discharge from the military or naval forces there should be submitted:

(1) Certificate of discharge from the service, or copy of such certificate.

(2) Certified copy of public record of death, showing cause of death.

(3) Affidavit of physician who attended decedent during last illness, setting forth the medical history of the decedent while under his treatment.

(4) Affidavits or other evidence to show that the death resulted from injuries received, or disease contracted, while serving in the military or naval forces during the war with Germany.

If it is determined by the Commissioner of Internal Revenue that the estate is entitled to the exemption, the executor will be notified to that effect, and his duties with respect to the tax will cease. If the evidence submitted in support of the claim is found not to be satisfactory, such further evidence will be called for, or such investigation instituted, as the Commissioner may direct. If it is determined that the estate is not entitled to the exemption, the executor will be required to file return and pay tax in the same manner as executors of other taxable estates.

**ART. 11. CLAIMS FOR REFUND.**—Prior to the passage of the Revenue Act of 1918 there was no military exemption from estate tax except with respect to the increase of rates imposed by the Revenue Act of 1917. The provision in the Revenue Act of 1918 granting the exemption is retroactive,

and authorizes the refund of all estate taxes collected under the provisions of former acts from estates now entitled to the exemption. Where such taxes have been collected, the executor should file a claim for refund on Form 46, accompanied by the same evidence as is required in support of a claim for military exemption.

#### GROSS ESTATE: INDIVIDUAL PROPERTY.

SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated —

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

ART. 12. CHARACTER OF INTERESTS INCLUDED.— This provision is designed to include all property interests of the decedent, of whatever character. It is the commonest form of taxable transfer. As a basis for tax, there must be an actual, beneficial ownership in the decedent, not a bare legal title, or one held in trust. Thus, property actually devoted to religious or charitable purposes, and placed in the name of an individual solely for convenience in administration, is not included in his gross estate. The statute also includes only property rights existing in the decedent in his lifetime and passing to his estate. It consequently does not include a right which came into existence only after the decedent's death, such as a cause of action by statute for causing the death. The proceeds of such a cause of action should not be included in the gross estate, whether payable generally to the estate or to some specified class of persons, such as the widow or children.

The value of a vested remainder should be included in the gross estate. Nothing should be included, however, on account of a contingent remainder where the contingency does not happen in the lifetime of the decedent, and the interest

consequently lapses at his death. Nor should anything be included on account of a life estate in the decedent. There should be included, however, the value of an annuity payable to the decedent upon the life of a third person who survives him, and the value of an estate for the life of a person other than the decedent. For rules as to valuing such annuities and illustrations, see Article 20.

ART. 13. SPECIFIC PROPERTY TO BE INCLUDED.—Real property owned by the decedent, when situated in the United States, should be included in the gross estate, whether the decedent was a resident or a nonresident, and whether the property came into the possession and control of the executor or administrator or passed directly to heirs or devisees. Real property not situated in the United States should not be included, whether the decedent was a resident or nonresident. Where the decedent was a resident, all personal property owned by him should be included, wherever situated. Where decedent was a nonresident, so much of his personal property as was actually situated in the United States at the time of his death should be included. For further discussion of the rules relating to the estates of nonresidents, see Article 60.

A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of such part of it as is not designed for the interment of the decedent or members of his family. Rent which had accrued upon real property at the time of the decedent's death, whether then payable or not, is included in the gross estate. The amount of interest accrued upon bonds on the day of death, whether payable then or subsequently, should be included. All matured coupons, whether presented for payment or not, should be included. The value of notes or other claims held by the decedent should be included, though they are canceled by his will or appear to be barred by the statute of limitations. As to the valuation of notes

or claims apparently barred, see Article 15, paragraph 3. All bonds, whether federal, state, or municipal, and whether or not containing a tax-free covenant, should be included.

Dividends, whether upon preferred or common stock, should not be included unless actually declared prior to the date of death. The amount of dividends upon stock which have been declared, but not paid, must be returned where the value of the stock at the time of the decedent's death does not reflect the dividends; that is, where the death occurs after the closing of the books of the corporation and the stock consequently sells "ex dividend." Where the death occurs before the closing of the books, the value of the stock reflects the dividend, and it should not be included.

Example: A 5 per cent dividend upon stock is declared March 1, payable on April 1 to stockholders of record on March 15. If the death occurred on March 10 and the market price on that day was 90, the value to be returned for both stock and dividend is 90, the dividend being reflected in the quoted price. If the death occurred on March 20, the books have been closed and the dividend is not reflected in the selling price. Under these circumstances the dividend must be returned in addition to the quoted price of the stock; and the proper return would be stock 90, dividend \$5.

ART. 14. VALUE.—The value at which property included in the gross estate is to be returned for tax purposes is the value at the time of the decedent's death. Neither depreciation nor appreciation in value subsequent to the date of death is considered. The value to be ascertained is the market, or sale, value of the property. The highest price obtainable for the property within a reasonable period of the decedent's death is the value to be included. A sale of the property, however, in order to be accepted as the criterion of value, must be made in such manner as to insure the best price obtainable under existing circumstances. This requires (a) that the sale be made as a matter of busi-

ness, and not merely in order to establish value; (b) that it be made in absolute good faith, with a view to realizing as high a price as possible; and (c) that reasonable care and skill be exercised to obtain such price. If one method brings better results than another, the better method must be employed.

For example, if individual sales of property are better adapted to procure a good price than auction sales, the price obtained at an auction sale will be accepted only after reasonable effort to find individual purchasers has been made. See further on this point Article 15.

Great care must be exercised by the executor to arrive at a fair valuation of every asset of the gross estate.

ART. 15. RULES FOR THE VALUATION OF PROPERTY.—(1) *Real estate*.—Where real property has been sold, the amount received will be taken as its value provided the sale was made within a reasonable period of the decedent's death, and in such manner as to insure the highest possible price. Where no sale has been made, the criterion of value is the best price which could have been obtained within a reasonable period of the decedent's death. The amount brought at an auction sale should be considered, but will be accepted only if it appears that there was no available method of obtaining a higher price. The assessed valuation of the property should be considered, but is not conclusive. All relevant facts and all elements of value should be considered in every case. See further the general rules laid down in Article 14.

(2) *Stocks and bonds*.—The value of stocks and bonds listed upon a stock exchange should be obtained by taking the mean between the highest and the lowest sale price upon the day of death, provided the sales were made in the regular course of business, and not for the special purpose of establishing value. If there were no sales upon the date of death, the price nearest to that date, and within a reasonable



period thereof, either before or after death, should be taken. Such sale price obtains irrespective of the number of shares held by the estate. If the security was listed upon more than one exchange, the records of the exchange where the security is principally dealt in should be employed. If the decedent died on Sunday or a legal holiday, the business of the previous day will govern.

If the stock is not listed upon an exchange, but is dealt in actively by brokers or has other active market, the latest sale price prior to the day of death will govern. If there is no active market for the stock and no sales of it have been made within a reasonable period of the decedent's death, and in particular where it is closely held (stock of a "close corporation"), return should be made upon the basis of the value of the stock, as evidenced by the clear value of the excess of the assets of the corporation over its liabilities, and its earning capacity for the five years preceding the death of the decedent. Where the earnings of the corporation have been greater than a fair return on its invested capital, computed according to the nature of the business, and where the business is a going business, there should be added to the net value of the other assets of the business the value of the good will, computed in accordance with sound accounting principles. Where the earnings of the corporation have been less than a fair return on the invested capital, if the difference is material and the decreased earnings affect value, the net worth of the corporation as disclosed by its balance sheet may be adjusted on a reasonable basis to allow for this decreased value. In all cases where stock of this character forms a principal asset, there should be submitted with the return, Form 706, a copy of the balance sheets for the five preceding years, and of the balance sheet on the day of death or the nearest date thereto, together with a statement of the net earnings of the invested capital for the preceding five years.

The full value of securities pledged to secure a loan should be included in the gross estate. If the decedent had a trading account with a broker, all securities belonging to the decedent held by the broker at the date of death must be included at their market value on that date. Securities purchased on margin for the decedent's account and held by the broker should also be returned at their market value on the day of death. The amount of the decedent's indebtedness to the broker will be allowed as a deduction from the gross estate. (See Art. 45.)

(3) *Notes, secured and unsecured.*—Notes, whether secured or unsecured, will be presumed to be worth their full face value, plus accrued interest to the date of decedent's death, unless the executor establishes the right to return them at a lower valuation. Interest should be computed upon the basis of 365 days to the year. In the case of an unsecured note it must be shown by satisfactory evidence, in order to justify failure to include it, that the note is uncollectible, either in whole or in part, from the maker or other parties to the note, on account of the insolvency of the parties thereto, or other cause. Where the note is secured it must also be shown that the security is insufficient to satisfy it. Where a note appears to be barred by the statute of limitations its value must be included in the gross estate in the absence of proof that the liability has not revived by promise to pay or part payment, and also that the parties liable refuse to pay the debt and intend to assert the defense.

(4) *Cash on hand or on deposit.*—Bank deposits should be returned at the amount for which the bank would be liable if the deposit were withdrawn upon the date of the decedent's death. Interest which the bank agreed to pay upon condition that the money remain on deposit after the death should not be included.

(5) *Interest in business.*—Care should be taken to arrive

at an accurate valuation of any business in which the decedent was interested, whether as partner or proprietor. The executor should not return the interest at its book value unless he is satisfied that the accounts of the business are kept upon a scientific basis. A fair appraisal as of the date of death should be made of all the assets of the business, tangible and intangible. Special attention should be given to fixing an adequate figure for the value of the good will of the business in all cases in which the decedent had an interest in the good will which passed to his estate. Where the original copartnership articles, or a renewal thereof, provide that the value of the interest of a deceased partner shall be determined without reference to good will, but that the surviving partners shall take the entire good will, nothing is to be included in the estate of the deceased partner on account of good will. Where, however, the deceased partner makes a gift of his interest in the good will to the surviving partners, to take effect upon his death, the value of such interest should be included in the decedent's gross estate. Such a gift exists where the only consideration for the surrender of the good will at death consists of similar promises by the other partners. The business should be given a net worth equal to the amount a financially competent buyer, whether an individual or corporation, might be expected to pay at a normal sale in view of the net value of the assets and the demonstrated earning capacity.

(6) *Patents, trade-marks, and copyrights*.—The basis for valuation of intangible assets of this character is the present worth of the estimated future earnings of the exclusive right during the rest of its existence. The return received by the decedent should be considered in estimating future earnings.

(7) *Accounts receivable, claims, judgments, etc.*—A fair valuation for assets of this character at the time of death should be fixed by the executor according to the best infor-

mation available to him at the time of making return. A right of action which died with the decedent should not be included in the gross estate.

(8) *Furniture, personal effects, and other tangible property.*—For the method of valuation to be employed in the case of household furniture and personal effects see Articles 16 to 19. With respect to all other tangible property the executor should endeavor to arrive at the sound and actual value at the day of death. Where such property is subsequently sold the sale price must be returned if the sale was a bona fide sale and for the best price obtainable. In the case of growing crops the executor should ascertain from expert opinion what the value of the growing crop was on the day of death, as evidenced by subsequent yield and crop prices. Where the crop is matured the value is the value of the crop unit on the day of death for the entire yield, less the cost of harvesting and marketing. Where the crop is not matured these factors should be considered; and the opinion of those expert in such matters should be ascertained as to what the crop was reasonably worth as a growing crop on the day of death.

ART. 16. APPRAISAL OF HOUSEHOLD AND PERSONAL EFFECTS—GENERAL PROVISIONS.—Executors and administrators are required to have careful appraisal made of all household and personal effects of the decedent, and to furnish in duplicate detailed lists and affidavits in the manner directed below. No distribution of such effects may be made until the lists and affidavits have been filed with the collector, and, if deemed necessary, sufficient time afforded the Bureau to have personal inspection made by an official appraiser. Where it is desired to distribute or sell all the property in advance of the filing of the return, the lists and affidavits should be filed with the collector, together with a letter stating when it is desired to effect distribution. If personal inspection by an internal-revenue officer is not deemed

necessary, a waiver of such examination will be sent to the executor, who may thereupon proceed with distribution.

ART. 17. SAME — WHEN VALUE IS LESS THAN \$2,000.— When the value of the personalty involved is less than \$2,000, the detailed lists may be prepared by the executor personally. A room by room appraisal is desirable; and all the articles should be named specifically, except those of small value, such as common bric-a-brac or cheap books. A separate value should be given for each article named, except that the values of a number of articles contained in the same room may be grouped. The value of an article worth more than \$50 should be stated separately. Such an entry as the following would be acceptable:

Dining room: Table, six chairs, three pictures (common prints), value \$75; sideboard, \$60; total, \$135.

If there should be included in the lot, however, jewelry or silverware of more than ordinary value, or articles having a marked artistic value, the executor must furnish an appraisal by persons thoroughly qualified by training and experience to judge of the value of such articles.

In the case of effects having a total value of less than \$2,000, the executor may furnish as an alternative requirement a sworn estimate in duplicate of the approximate total value of the property by a professional appraiser of recognized standing and ability, or by a dealer in the class of personalty involved.

In addition to the lists or estimates described above, the executor must furnish in duplicate his affidavit as to the completeness of the lists and the qualifications of the appraiser.

ART. 18. SAME — WHEN VALUE IS MORE THAN \$2,000.— When the value of the effects is more than \$2,000, detailed lists must be furnished, prepared by professional appraisers of recognized competence, or by dealers in the particular classes of personalty involved. The lists must be prepared

in the same detail as that indicated above for the executor's list. Where the personalty includes jewelry, silverware, or like articles, except in cases where the value of these items is insignificant, the appraisal of a reputable dealer or appraiser of jewelry must be furnished.

In the case of articles having marked artistic value, such as paintings, engravings, etchings, statuary, vases, oriental rugs, or antiques, the appraisals of experts will be required. The description of such articles should be fully given. Where paintings having artistic value are listed, the size, subject, and artist should be named. In the case of oriental rugs, the size, make, age, etc., should be given. The weight in ounces of each articles of silverware should be stated. With the duplicate lists there must be filed the executor's affidavit as to the completeness of the list and the qualifications of the appraisers.

ART. 19. SAME—APPRAISERS AND BASIS OF APPRAISALS.—Where expert appraisers are to be employed, care should be taken to see that they are men of recognized competence with respect to the particular class of property involved. In order to facilitate the acceptance of the appraisal, appraisers should be employed whose competence is well established.

The basis to be employed in appraising articles of this character is what they would bring at a bona fide sale to individual purchasers, to dealers, or upon a well-advertised auction sale. If there has been an actual bona fide sale, the amount received may be returned as the value of the property. Where property is valued by legatees for purposes of distribution, such value will not necessarily be accepted. The original cost of the articles is not necessarily a proper basis, on account of depreciation or appreciation in value.

ART. 20. VALUATION OF ANNUITIES, LIFE, AND REMAINDER INTERESTS.—Where the decedent was entitled to receive an annuity of a definite amount during the lifetime of another

person, and the right constitutes an asset of his estate, the present worth of the annuity at the time of the decedent's death must be computed upon the basis of the expectancy of life of the other person. The table marked "A" upon page 19 should be used for this computation. The amount of annual income should be multiplied by the figure in column 3 of the table opposite the number of years in column 1 nearest to the actual age of the other person.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for the life of his elder brother. The brother at the decedent's death was 40 years 8 months old. By reference to the table the figure in column 3 opposite 41 years, the number nearest to the brother's age, is found to be 14.86102. The present worth of the annuity is therefore \$148,610.20.

Where the decedent was entitled to receive the annuity during a specified number of years, the table marked "B" upon page 20 should be used.

Example: The decedent received under the terms of his father's will an annuity of \$10,000 for a period of 20 years, 15 of which had expired at the decedent's death. By reference to the table it is found that the figure in column 2 opposite 5 years, the unexpired portion of the 20-year period, is 4.45182. The present worth of the annuity is, therefore, \$44,518.20 (4.45182 multiplied by 10,000).

Where the decedent was entitled to receive the entire income of certain property during the life of another or for a term of years, and where the rate of income is fixed by the instrument creating the trust or is definitely determinable at the time of the decedent's death, the average annual income which the property actually yields should be determined, and its present worth computed, as explained above in the case of annuities.

Example: The decedent's father placed \$100,000 in trust, with directions that it be invested in state and municipal bonds and the entire income paid to the decedent during the

life of his elder brother, who was 41 years old at the decedent's death. Before the decedent's death the money was invested in state and municipal bonds, and actually yielded a net return of \$5,000 per annum. In this case the rate of income is definitely determinable. By reference to the table it is found that the present worth of an income of \$5,000, dependent upon the life of a person 41 years of age, is \$74,305.10 (14.86102 multiplied by 5,000).

Where the rate of annual income is not determinable, or where the decedent was entitled merely to the personal use of nonincome-bearing property, a hypothetical annuity at a rate of 4 per cent of the value of the property should be made the basis of the calculation.

Example: The decedent died before a fund of \$100,000, of which he was entitled to receive the income during the life of a person 41 years old, had been invested by the trustees. The value of a hypothetical annuity of \$4,000, dependent upon the life of such a person, is indicated by the table to be \$59,444.08.

Where the decedent possessed a remainder interest in property subject to the life estate of another, and such interest constituted an asset of his estate, the present worth of the remainder interest at the time of death should be obtained by multiplying the value of the property at the time of death by the figure in column 4 of Table A opposite the number of years nearest to the age of the life tenant. Where the remainder interest is subject to an estate for a term of years Table B should be used.

Example: The decedent was entitled to receive property worth \$50,000 upon the death of his elder brother, to whom the income for life had been bequeathed. The brother at the time of the decedent's death was 31 years old. By reference to the table it is found that the figure in column 4 opposite 31 years is 0.31262. The present worth of the remainder interest is, therefore, \$15,631.



TABLE "A."

Table, single life, 4 per cent, showing the present worth of an annuity, or life interest, and of a reversionary interest.

1	2	3	4	1	2	3	4
Age	Expect- ancy of life	Annuity, or present value of \$1 due at the end of each year during the life of a per- son of speci- fied age	Reversion, or present value of \$1 due at the end of the year of death of a person of speci- fied age	Age	Expect- ancy of life	Annuity, or present value of \$1 due at the end of each year during the life of a per- son of speci- fied age	Reversion, or present value of \$1 due at the end of the year of death of a person of speci- fied age
		<i>Annuity</i>	<i>Reversion</i>			<i>Annuity</i>	<i>Reversion</i>
0	23.179	\$14.72829	\$0.39507	51	17.527	\$12.17919	\$0.49311
1	30.552	17.30771	.29586	52	16.947	11.88408	.50446
2	35.626	18.69578	.24247	53	16.372	11.58531	.51595
3	37.572	19.15901	.22465	54	15.804	11.28325	.52757
4	38.702	19.41226	.21491	55	15.243	10.99789	.53931
5	39.352	19.55301	.20950	56	14.689	10.66982	.55116
6	39.654	19.61731	.20703	57	14.143	10.35951	.56310
7	39.691	19.62502	.20673	58	13.003	10.04630	.57514
8	39.625	19.61097	.20727	59	13.072	9.73131	.58726
9	39.264	19.53413	.21022	60	12.549	9.41474	.59943
10	38.891	19.45359	.21332	61	12.029	9.09765	.61163
11	38.507	19.36943	.21656	62	11.532	8.78052	.62382
12	38.113	19.28184	.21993	63	11.039	8.46412	.63000
13	37.710	19.19065	.22344	64	10.557	8.14888	.64812
14	37.298	19.09590	.22708	65	10.088	7.83552	.66017
15	36.877	18.99764	.23086	66	9.630	7.52476	.67212
16	36.447	18.89569	.23478	67	9.185	7.21699	.68396
17	36.010	18.79010	.23884	68	8.753	6.91298	.69565
18	35.565	18.68070	.24305	69	8.333	6.61301	.70719
19	35.113	18.56751	.24740	70	7.926	6.31716	.71857
20	34.652	18.45038	.25191	71	7.532	6.02612	.72976
21	34.186	18.32932	.25656	72	7.151	5.74003	.74077
22	33.711	18.20416	.26138	73	6.782	5.45928	.75157
23	33.230	18.07471	.26636	74	6.425	5.18402	.76215
24	32.742	17.94097	.27150	75	6.081	4.91463	.77251
25	32.248	17.80274	.27682	76	5.749	4.65125	.78264
26	31.747	17.65984	.28231	77	5.428	4.39383	.79254
27	31.239	17.51224	.28799	78	5.119	4.14286	.80220
28	30.725	17.35968	.29386	79	4.823	3.89858	.81159
29	30.205	17.20225	.29991	80	4.537	3.66071	.82074
30	29.678	17.03961	.30617	81	4.262	3.42900	.82965
31	29.147	16.87176	.31262	82	3.995	3.20258	.83833
32	28.608	16.69846	.31929	83	3.737	2.98021	.84691
33	28.067	16.51964	.32617	84	3.484	2.76106	.85534
34	27.516	16.33503	.33327	85	3.233	2.54366	.86371
35	26.961	16.14437	.34060	86	2.992	2.32795	.87200
36	26.401	15.94755	.34817	87	2.752	2.11384	.88024
37	25.834	15.74427	.35599	88	2.517	1.90115	.88842
38	25.263	15.53421	.36407	89	2.286	1.69107	.89650
39	24.685	15.31722	.37241	90	2.062	1.48540	.90441
40	24.101	15.09295	.38104	91	1.845	1.28432	.91211
41	23.511	14.86102	.38996	92	1.637	1.09024	.91961
42	22.915	14.62122	.39918	93	1.442	.90617	.92667
43	22.313	14.37356	.40871	94	1.263	.73687	.93320
44	21.708	14.11860	.41852	95	1.103	.58435	.93906
45	21.103	13.85713	.42857	96	.975	.46182	.94378
46	20.499	13.58958	.43886	97	.877	.36698	.94742
47	19.896	13.31698	.44935	98	.746	.24038	.95229
48	19.298	13.03942	.46002	99	.500	.00000	.96154
49	18.703	12.75716	.47088				
50	18.113	12.47032	.48191				

TABLE "B."

1 Number of years	2 Present worth of an annuity of \$1, payable at the end of each year, for a certain number of years.	3 Present worth of \$1, payable at the end of a certain number of years.	1 Number of years	2 Present worth of an annuity of \$1, payable at the end of each year for a certain number of years.	3 Present worth of \$1, payable at the end of a certain number of years
	<i>Annuity</i>	<i>Reversion</i>		<i>Annuity</i>	<i>Reversion</i>
1	\$0.96154	\$0.961538	16	\$11.65229	\$0.533908
2	1.88609	.924556	17	12.16557	.513373
3	2.77509	.888996	18	12.65929	.493628
4	3.62989	.854804	19	13.13394	.474642
5	4.45182	.821927	20	13.59032	.456387
6	5.24214	.790314	21	14.02916	.438834
7	6.00205	.759918	22	14.45111	.421955
8	6.73274	.730690	23	14.85684	.405726
9	7.43533	.702587	24	15.24696	.390121
10	8.11089	.675564	25	15.62208	.375117
11	8.76017	.649581	26	15.98277	.360689
12	9.38507	.624597	27	16.32958	.346816
13	9.98565	.600574	28	16.66306	.333477
14	10.56312	.577475	29	16.98371	.320651
15	11.11839	.555265	30	17.29203	.308319

## DOWER AND COURTESY.

(SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, courtesy, or by virtue of a statute creating an estate in lieu of dower or courtesy;

ART. 21. DOWER AND COURTESY.—This provision includes dower and courtesy at common law, and all interests created by statute in lieu thereof, although the estate or interest so created is different in character. The effect of this provision is to require the inclusion of the full value of the land, without deduction of the value of the interest of a surviving husband or wife. This rule applies to the estate of any decedent dying after September 8, 1916.

## TRANSFERS BY DECEDENT IN HIS LIFETIME.

(SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—)

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any

time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this Act), except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

ART. 22. NATURE AND TIME OF TRANSFER.—A transfer made by the decedent in his lifetime, if made by way of gift, is taxable when made in contemplation of death, or intended to take effect in possession or enjoyment at or after the death of the transferor. No distinction is made between ordinary transfers and transfers involving the creation of a trust. Where a transfer, however, constitutes a *bona fide* sale for a fair consideration in money or money's worth, it is not taxable. In order to constitute such a *bona fide* sale, there must be a valuable consideration, as distinguished from love and affection. A sale implies the receipt of a price, in money or thing of value. The release of an existing claim, by way of accord and satisfaction, is not sufficient. The price must also be a fair equivalent for the property transferred. Where the price is not a fair one, the sale will not be considered to have been made *bona fide*. Such transfers are taxable whether made before or after September 8, 1916.

#### TRANSFERS IN CONTEMPLATION OF DEATH.

ART. 23. NATURE OF TRANSFER.—The words "in contemplation of death" do not refer to the general expectation of death which all persons entertain. A transfer, however, is made in contemplation of death wherever the person making it is influenced to do so by such an expectation of death, arising from bodily or mental conditions, as prompts persons to dispose of their property to those whom they deem

proper objects of their bounty. The cause which induces such bodily or mental conditions is immaterial; and it is not necessary that the decedent be in the immediate expectation of death. Such a transfer is taxable, although the decedent parts absolutely and immediately with his title to and possession of the property. Transfers made within two years of a decedent's death are presumed to be taxable if they are of a material part of his property and are in the nature of a final disposition thereof. Where a transfer is of this character, the executor must disclose the transfer in the return; but he may submit therewith evidence that it was not made in contemplation of death. The executor must also return transfers by the decedent of a material part of his property to relatives, though made more than two years before his death; but he need not list them as taxable if he contends otherwise. All facts relating to the transfer should be stated, including the motive therefor, the decedent's state of health, and his anticipation of death. The presumption of taxability may be rebutted by proof that the transfer was not induced by bodily or mental conditions leading the grantor to make a disposition of property testamentary in its nature. The fact that a gift was made as an advancement, to be taken into account upon the final distribution of the decedent's estate, is not enough, standing alone, to establish taxability; but it is a circumstance to be considered in determining whether the transfer was made in contemplation of death.

#### **TRANSFERS INTENDED TO TAKE EFFECT AT OR AFTER DEATH.**

ART. 24. RESERVATION OF INCOME.—A transfer is taxable where the grantor reserves to himself during life the income of the property transferred. In such a case the transfer of the principal takes effect in possession and enjoyment after the death of the grantor, and the value of the entire property should be included in the gross estate. Where the

grantor reserves a proportionate part of the income, only a corresponding proportion of the property should be included in the gross estate, unless the transfer was made in contemplation of death. If, for example, he reserves one-half of the income, the value of one-half of the property transferred should be included in the gross estate. If he reserves an annuity, so much of the property as is necessary to produce the annuity should be included in the gross estate. Where the property does not produce income, its value as of the date of the decedent's death should be ascertained, and so much of this sum as is necessary to produce the annuity should be included in the gross estate. A transfer is taxable in accordance with these principles whether the grantor makes a reservation of the annuity out of the property conveyed, or exacts from the grantee an agreement to pay the annuity. A gift of the principal of a trust fund which takes effect at or after the decedent's death is taxable, although the income during the decedent's life is payable to some one other than himself. Example: The decedent transfers property to his son, the latter agreeing to pay the income to his mother during the decedent's life. The transfer to the son is taxable.

ART. 25. POWER OF REVOCATION OR CONTROL.—A transfer by way of trust is taxable where the grantor reserves a power of revocation, even though he does not reserve any interest in the trust created. For example, where a father places property in trust for the present benefit of his son, but reserves power to revoke the trust at any time during his life, the entire property transferred should be included in the gross estate. A transfer by way of trust is also taxable where the grantor reserves power to control the administration of the trust, as by reserving power to change the trustee, the trust period, the trust property, or the respective interests of the beneficiaries in such property.

ART. 26. VALUATION OF PROPERTY TRANSFERRED.—The

property to be valued is the interest owned and transferred by the decedent; but the value of such property must be ascertained as of the date of the decedent's death. Where the transferee makes additions to the property, or betterments, the value of the additions or betterments at the time of death are not to be included. For example, a father makes a transfer to a son, in contemplation of death, of unimproved real estate valued at \$20,000. The son erects buildings on the land at a cost of \$10,000. The amount to be included in the gross estate of the father is the value of the entire property at the time of his death less the value of the buildings on that date.

#### PROPERTY HELD JOINTLY.

(SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated —)

(d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent;

ART. 27. PROPERTY HELD JOINTLY OR AS TENANTS IN THE ENTIRETY.— The statute provides for the taxation of interests held jointly, or as tenants in the entirety, by the decedent and any other person or persons. This class of property includes all interests, whether in real or personal property, in which the survivor takes the entire property by right of survivorship, and it consequently does not form part of the decedent's estate for purposes of administration. It does not include interests held as tenants in common, where the interest of each tenant passes to his estate, free from any right of survivorship.

The following are examples of this class of property: Real estate held jointly; real estate held by husband and

wife (known as an estate in the entirety) ; money deposited in a bank or trust company in the joint names of the decedent and another and payable to either or the survivor ; joint trading accounts with brokers ; stocks and bonds held in the joint names of several owners.

ART. 28. TAXABLE PORTION.— The value of such property to be returned for tax is the value of the entire property, unless it can be shown that part of it originally belonged to the other joint owner and never belonged to the decedent. In order to exclude any part of such property from the gross estate the executor must show an original contribution of value by some person other than the decedent. If such a contribution can be established, the proportion thereof to the entire purchase price represents the interest in the property which should be excluded from the gross estate. Three cases may arise: (1) The decedent may have paid the entire purchase price, in which case the entire property should be included; (2) the decedent may have paid only a portion of the purchase price, in which case only a corresponding portion of the property should be included; (3) the decedent may have paid no part of the purchase price, in which case no part of the property should be included. In the case of bank deposits, the same rule applies; that is, the interest of the decedent in the account is determined by the amount of his contribution. For example: An account of \$1,000 is opened, of which the decedent contributes one-half. Interest of \$40 has accumulated at the time of the decedent's death, and nothing has been withdrawn. Under these facts \$520 should be included in the gross estate.

ART. 29. HUSBAND AND WIFE.— Property owned by husband and wife as tenants in the entirety is governed by the rule given above. The whole value of the property must be included, in the absence of a showing as to the original contributions. An exception is made, however, where property is conveyed to husband and wife without valuable consider-

ation, or where the property was purchased out of common funds, representing the savings of husband and wife, or was the fruit of joint labor, the proportion of the several contributions having been lost sight of. In such cases one-half of the total value of the property should be returned.

#### PROPERTY PASSING UNDER POWER OF APPOINTMENT.

(SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated —)

(e) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth; and

ART. 30. GENERAL RULES.—As a general rule, property passing under a general power of appointment must be included in the gross estate of the person exercising the power (known as the donee, or appointor) where the power is exercised by will, or by deed executed in contemplation of death, or intended to take effect at or after death. This general rule applies wherever the decedent died after September 8, 1916, although the power was created prior to that date. In certain cases, however, the transfer is taxable under the Revenue Act of 1918 when it would not be taxable under the Revenue Act of 1916 (See Art. 31).

Only property passing under a *general* power should be included. A general power is one to appoint to any person or persons in the discretion of the donee. Where the donee is required to appoint to a specified person or class of persons, the property should not be included in his gross estate. Property appointed under a general power should be included in the estate of the appointor, although the persons to whom the appointment was made would have taken the property had the power not been exercised. A copy of the instrument granting the power should be filed with Form



706 in all cases in order that the Bureau may determine whether the power is general or special.

Example: The income of property is left to a person for life, with the right to name in his will the person who shall receive it upon his death. He exercises this power in his will. Upon his death, if occurring after September 8, 1916, the property so appointed should be included in his gross estate.

ART. 31. SPECIAL RULES — POWERS EXERCISED BEFORE AND AFTER FEBRUARY 25, 1919.— The Revenue Act of 1918 taxes all transfers effected by the exercise of a general power of appointment, provided the exercise was by will, or by deed made in contemplation of death, or intended to take effect at or after death. It follows that all transfers of this character, where the decedent died after February 24, 1919, are taxable, and the property must be included in the gross estate.

Where the decedent died between September 8, 1916, and February 25, 1919, the taxability of the transfer depends upon whether the property was subject to the claims of the creditors of the appointor, in preference to the person or persons in whose favor the power was exercised. The general rule is, that the property is so subject; and it should consequently be included in the gross estate unless this rule has been abrogated in the State whose laws determine the nature and effect of the transfer. All such transfers should be disclosed to the Bureau in order that it may pass upon the question of taxability.

#### INSURANCE.

(SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated —)

(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all

other beneficiaries as insurance under policies taken out by the decedent upon his own life.

ART. 32. TAXABLE INSURANCE.—The statute provides for the inclusion in the gross estate of certain forms of insurance taken out by the decedent upon his own life. Two kinds of insurance are taxable: (a) all insurance payable to the estate; (b) insurance payable to individual beneficiaries to the extent that it exceeds \$40,000. The term “insurance” refers to life insurance of every description, including death benefits paid by fraternal beneficial societies, operating under the lodge system. Insurance is deemed to be taken out by the decedent in all cases where he pays the premiums, either directly or indirectly, whether or not he makes the application. On the other hand, the insurance should not be included in the gross estate, even though the application is made by the decedent, where the premiums are actually paid by some other person or corporation, and not out of funds belonging to, or advanced by, the decedent. Where the decedent takes out insurance in favor of another person or corporation, as collateral security for a loan or other accommodation, and the decedent, either directly or indirectly, pays the premiums thereon, the insurance must be considered in determining whether there is an excess over \$40,000. Where the decedent assigns a policy, and retains no interest therein, and thereafter pays no part of the premiums, the insurance will not be considered in determining whether there is such a taxable excess.

ART. 33. INSURANCE IN FAVOR OF THE ESTATE.—The provision requiring the inclusion in the gross estate of all insurance receivable by the executor, without any deduction, applies to policies made payable to the decedent’s estate or his executor or administrator, and all insurance, regardless of the manner of execution, which is in fact receivable by the estate, or which must be used to pay charges against the estate or the expenses of administration. This provision

includes insurance taken out to provide funds to meet the estate tax, state inheritance taxes, or any other legal charge upon the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the beneficiary, to use the proceeds in payment of the charge.

ART. 34. INSURANCE RECEIVABLE BY OTHER BENEFICIARIES.—The estate is entitled to only one exemption of \$40,000 upon insurance payable to beneficiaries other than the executor. For example, if the decedent left life insurance payable to three persons in amounts of \$10,000, \$40,000, and \$50,000 (total, \$100,000), the amount of \$60,000 should be returned for taxation, which is the excess of the sum of the three policies over the exempted amount. The word “beneficiary,” as used in reference to the \$40,000 exemption, means a person entitled to the actual enjoyment of the insurance money.

ART. 35. EFFECTIVE DATE OF INSURANCE PROVISIONS.—Insurance receivable by the executor must be included in the gross estate of all decedents who died after September 8, 1916. Insurance payable to beneficiaries other than the executor, however, need not be included in the gross estate of decedents who died before February 25, 1919, the effective date of the Revenue Act of 1918, unless the insurance was originally payable to the estate, and was transferred by the decedent to specific beneficiaries in contemplation of death.

ART. 36. VALUATION OF INSURANCE.—The amount to be returned in the case of any policy is the amount actually receivable by the executor or beneficiary. In cases where the proceeds of a policy are made payable to the beneficiary in the form of an annuity for life or for a term of years, the present worth of the annuity at the time of death should be included in the gross estate. For the method of computing the value of such an annuity, see Article 20. Where the

insurance contract gives an option to receive a fixed sum of money in lieu of an annuity, this sum, if accepted, represents the value of the insurance for the purpose of the tax. If such sum is not accepted the value of the annuity is to be included in the gross estate. Where there is more than one option, and none of them is convertible, the value of the insurance should be determined in accordance with the option actually exercised.

#### DEDUCTIONS.

SEC. 403. That for the purpose of the tax the value of the net estate shall be determined —

(a) In the case of a resident, by deducting from the value of the gross estate —

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;

ART. 37. DEDUCTIONS IN THE CASE OF RESIDENT ESTATES.— In the case of the estates of residents, the deductions are made from the value of the entire gross estate, wherever situated. The deductions specified in the above provisions, contained in the Revenue Act of 1918, are proper in all cases where the decedent died on or after February 25, 1919. Where the decedent died prior to February 25, 1919, the case is governed by the provisions of the Revenue Act of 1916, which permits the following deductions:

- (1) Funeral expenses.
- (2) Administration expenses.
- (3) Claims against the estate.

- (4) Unpaid mortgages.
- (5) Losses from casualty or theft.
- (6) Support of decedent's dependents.
- (7) Other charges against the estate.
- (8) Specific exemption of \$50,000.
- (9) In the case of decedents dying after December 31, 1917, public, religious, charitable, scientific, literary, and educational bequests.

The provision in the Revenue Act of 1916 for the deduction of "such other charges" than those previously specified as may be allowed by the laws of the jurisdiction is omitted in the Revenue Act of 1918. Consequently, in the case of estates of all persons dying after February 24, 1919, the executor, in order to obtain a deduction, must bring the item within one of the classes specifically described.

ART. 38. GENERAL PROVISIONS RELATING TO DEDUCTIONS.—In order to be deductible, the item must be of the character described in the statute; and it must also be one the payment of which out of the estate is allowed by the law of the jurisdiction administering it. Where the item is not one of those described, it is not deductible merely because payment is allowed by the local law. On the other hand, no item is deductible unless its payment is so allowed. It must appear in every case either that payment of the item has been made, or that such payment is clearly contemplated. Where the amount which may be expended for the particular purpose is limited by the local law, no deduction in excess of such limitation is permissible. Where the local courts have approved the expenditure it will ordinarily be allowed for deduction. (See Art. 39.) Where the disbursement has not been made, the item may be entered for deduction where the amount is certain, and it appears satisfactorily that it will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. Where an uncertain or contingent liability, not allowed as a deduction, becomes fixed, and payment is made, the remedy is a claim for a refund of the excess tax.

ART. 39. EFFECT OF COURT DECREE.—The decision of a local court as to the amount of a claim or administration expense will ordinarily be accepted where the court passes upon the fact upon which deductibility depends. Where the court does not pass upon such fact its decree will, of course, not be followed. For example, where the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing that the claim is valid and the amount of it. Where, however, a legacy is left to an executor in lieu of commissions, the allowance of the legacy does not establish that the executor's claim for commissions is equal to the amount bequeathed, and that this amount is consequently deductible. (See Art. 42.) Nor will the decree necessarily be accepted even where it purports to decide the fact upon which deductibility depends. It must appear that the court actually passed upon the merits of the case. This will be presumed in all cases where there is an active and genuine contest. Where the result reached appears to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. Where the decree was rendered by consent, it will be accepted, provided the consent was a *bona fide* recognition of the validity of the claim—not a mere cloak for a gift—and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, where it is made by all parties having an interest adverse to the claim, when all aspects of the matter, including its effect upon taxation, are considered. The decree will not be accepted where it appears to be at variance with the law of the State; as, for example, if an allowance is made to an executor in excess of the rate prescribed by statute.

ART. 40. FUNERAL EXPENSES.—An executor may deduct such amounts for funeral expenses as are actually expended

by him, provided expenditures of this nature are a liability of the estate under the laws of the local jurisdiction. A reasonable expenditure by the executor for a tombstone, monument or mausoleum, or for a burial lot, either for himself or his family, may be deducted under this heading, provided such an expenditure is made a charge upon the estate by the local law. Included in funeral expenses is the transportation of the person bringing the body to the place of burial.

ART. 41. ADMINISTRATION EXPENSES.—The amounts deductible from the gross estate as “administration expenses” are such expenses as are actually and necessarily incurred in the administration of the estate; that is, in the collection of assets, payment of debts, and distribution among the persons entitled. The expenses contemplated in the law are such only as attend the settlement of an estate by the legal representative preliminary to the transfer of the property to individual beneficiaries or to a trustee, whether such trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor’s commissions; (2) attorney’s fees; (3) miscellaneous expenses. Each of these classes is considered separately. (See Arts. 42 to 44.)

ART. 42. EXECUTOR’S COMMISSION.—No amount may be deducted as commission in excess of that actually paid, or to be paid. Where the commission has not been allowed by the probate court, it may be deducted if its amount and future allowance are reasonably certain. In such case the executor must furnish satisfactory evidence at the time investigation is made that an account will be filed and the commission claimed. Where the executor does not intend to make any charge upon the estate for his services, or

where he does not intend to file any account with the local court, no deduction may be claimed.

No deduction may be made for trustees' commissions, and an executor who acts as trustee is not entitled to deduct the fee he receives for his services in the latter capacity. The executor's duties are complete when he has turned over the estate or the proceeds to the persons entitled thereto. Such persons may be beneficiaries entitled to receive the property in their own right, or trustees entitled to receive it in the right of their *cestuis que trust*. The services of the trustees, in character and in time of rendition, are distinct from, and additional to, the ordinary duties of an executor in the settlement of estates; and fees for such trustees' services do not constitute an expense of administration.

Where a bequest is made to an executor in lieu of commissions, the deduction of the amount allowed by the local law for services rendered will be permitted, without reference to the amount of the legacy. If the legacy is in excess of the amount so allowed, the excess may not be deducted.

Where commissions not actually allowed are deducted upon the basis of reasonable compensation, attention should be given to the size of the estate, the character of the property, the amount of work performed by the executor, and the commissions allowed in the case of similar estates. The value of the real estate should not be taken into account in estimating the commission unless it has actually passed through the executor's hands, or there is a mandatory provision in the will, or a court decree, directing its sale, and commissions are allowed by the local law.

Where the allowance of a commission is based upon services in relation to income of the estate, as well as principal, the entire commission is deductible.

ART. 43. ATTORNEY'S FEE.—Deduction may be taken for an attorney's fee for services rendered to the executor or administrator, in his official capacity, to the extent that such



fees are allowed by the laws of the local jurisdiction. Fees may be deducted, although not allowed by decree of court, provided they are reasonable in amount, and have actually been paid, or will be paid. Where the disbursement has not been made, the executor must furnish at the time of the investigation satisfactory evidence that payment will be made, and the amount of such payment.

The fees of an attorney employed by the executor to conserve the assets of the estate, to resist claims, and to defend the will may be deducted, since these are duties which the executor is required to perform. The cost of litigation instituted by the beneficiaries as to the amount of their respective interests may not be deducted, since expenses of this character are properly charges against the beneficiaries personally, rather than against the general estate.

ART. 44. MISCELLANEOUS ADMINISTRATION EXPENSES.— This item includes expenses incident to court proceedings, or the administration of the estate, such as court costs, surrogates' fees, accountants' fees, appraisers' fees, clerk hire, etc. Expenses necessarily incurred in distributing the estate are deductible. This includes the cost of storing or maintaining property of the estate, where it is impossible to effect immediate distribution to the beneficiaries. Expenses for preserving and caring for the property may be deducted, but do not include additions or improvements; nor will such expenses be allowed for a longer period than the executor is required to retain the property. A brokerage fee for selling property of the estate is deductible where the sale is necessary in order to pay the decedent's debts, or the expenses of administration, or to effect distribution. Other expenses attending the sale are deductible, such as the fees of an auctioneer, where it is reasonably necessary to employ one.

ART. 45. CLAIMS AGAINST THE ESTATE.— The amounts that may be deducted under this heading are such only as repre-

sent personal obligations of the decedent existing at the time of his death, whether then matured or not. Obligations contracted by the executor are not deductible. Only such claims as are actually enforceable against the estate may be deducted.

ART. 46. TAXES.—Taxes upon real property should be accrued to the date of death. This is done by ascertaining the time between the first day of the taxable period wherein the death occurs and the date of death, and computing the proportion of the entire tax which this period bears to the entire taxable period. Such proportion of the tax has accrued upon the date of death, and is deductible.

Taxes upon personal property are either wholly deductible, or are not deductible at all, depending upon whether the tax did, or did not, become the personal obligation of the taxpayer in his lifetime. If the tax became his personal obligation during his life, the whole amount is deductible as a claim against his estate. If it did not become such personal obligation in his lifetime, no part of it is deductible. The question when the tax became the personal obligation of the taxpayer depends upon the law of the jurisdiction where the decedent was domiciled at the time of his death. *Prima facie*, the date when the tax became the personal obligation of the taxpayer is the date when the assessment was laid.

In the case of federal taxes upon income, the tax upon income received or accrued during the decedent's lifetime constitutes the personal obligation of the decedent, and is deductible. Taxes upon income received after the decedent's death are not deductible. No estate, succession, legacy, or inheritance tax is deductible.

ART. 47. UNPAID MORTGAGES.—The full amount of unpaid mortgages on property included in the gross estate should be deducted under this heading, including interest which had accrued at the time of death, whether payable at that time

or not. Interest should be computed upon the basis of 365 days to the year. The full value of the real estate, without any deduction for mortgages, must be returned as part of the gross estate. As real property situated outside of the United States is not part of the gross estate, the amount of mortgages upon such property should be deducted only where the decedent was personally liable for the mortgage debt.

ART. 48. LOSSES FROM CASUALTY OR THEFT.—There may be deducted under this heading losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated by insurance or otherwise. If the loss is partly compensated, the excess of the loss over such compensation may be deducted. Losses not of the nature described are not deductible. Losses sustained by reason of depreciation in the value of the assets of the estate subsequent to the decedent's death are not deductible. The term "casualty" includes only losses of a fortuitous and unusual character, such as result from violence, or from a disaster which could not be foreseen or prevented by the exercise of reasonable care. Losses due to the death of animals from disease are deductible. In order to be deductible a loss must occur during the settlement of the estate. Where property has been delivered to the beneficiary, settlement has been effected, and no deduction may be had for loss of the property.

ART. 49. SUPPORT OF DEPENDENTS.—The support during the settlement of the estate of dependents of the decedent should be deducted, but pursuant to the following rules:

(1) In order to be deductible, the allowance must be authorized by the laws of the jurisdiction in which the estate is being administered; and no sum is deductible in excess of the amount so authorized, whether actually expended or not.

(2) The only subject for deduction is *money* thus allowed and paid. The turning over of furniture or other personal property, although under the authority of a statute, is not a proper subject for deduction.

(3) The amount sought to be deducted must be reasonably required for support. This means that the alleged dependent shall actually require the allowance for his support. Mere relationship to the decedent is not enough. A person is not dependent where he has means of his own sufficient to support him according to his station in life. This implies, however, the possession of *income*, either from property or earnings, sufficient to support him according to his scale of living at the time of the decedent's death. A person is not removed from the dependent class by the possession of property, which he might sell or mortgage. Where a person is thus dependent at the time of the allowance, it does not affect the deduction that he subsequently comes into the possession of money or property, through the distribution of the estate or otherwise. The whole amount of the allowance is deductible, whether paid in one sum or in installments.

(4) The money must be actually expended for support. This means that the executor or administrator must pay it to the persons entitled. After the payment has been made, the deduction of the sum is proper, and is not affected by the fact that the dependents do not use the whole of it during the period of administration.

#### PROPERTY PREVIOUSLY TAXED.

(SEC. 403. That for the purpose of the tax the value of the net estate shall be determined —

(a) In the case of a resident, by deducting from the value of the gross estate —

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any per-

son who died within five years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under the Revenue Act of 1917 or under this Act was collected from such estate, and if such property is included in the decedent's gross estate;

ART. 50. PROPERTY TAXED WITHIN FIVE YEARS.— There may be deducted from the gross estate under this heading an amount equal to the value at the time of the decedent's death of any property which can be identified as having been received by him as a share in the estate of any person who died within five years prior to the decedent's death, if an estate tax under the Revenue Act of 1917 or the Revenue Act of 1918 was collected from such estate. There may also be deducted an amount equal to the value of property which can be identified as having been acquired by the decedent in exchange for property received as a share in the estate of such a prior decedent. In order to establish the right to this deduction it must be shown —

(1) That the two deaths occurred within five years of each other;

(2) That the first decedent died after October 3, 1917, the date of the passage of the Revenue Act of 1917, and that the second decedent died after February 24, 1919, the date of the passage of the Revenue Act of 1918;

(3) That an estate tax has actually been collected from the estate of the prior decedent (the mere filing of a return for such an estate not being sufficient); and

(4) That the property received from the prior estate was returned as part of the gross estate of the prior decedent, and the property the value of which is sought to be deducted, or property taken in exchange therefor, has been included in the gross estate of the second decedent.

The statute limits the deduction to the value of property which can be identified by the executor as having been received or acquired in the manner described. The burden

rests upon the executor of proving that the estate is entitled to this deduction.

ART. 51. PROPERTY ORIGINALLY RECEIVED.— If the property originally received from the prior estate is included in the decedent's gross estate, the executor must describe it fully, and prove its identity with the property received from the prior estate. The value to be deducted is the value at the time of the second decedent's death.

ART. 52. PROPERTY ACQUIRED IN EXCHANGE.— The deduction for substituted property is limited to property acquired in exchange for the identical property received from the estate of the prior decedent. Where there is a subsequent exchange, the right to deduction is lost. Where, however, property is sold, and the proceeds immediately invested in other property, the property purchased is deemed to be taken in exchange, and its value is deductible.

In the case of an exchange the executor must describe and identify fully both the property originally received from the prior estate and the property acquired in exchange therefor. He must also state the date and nature of the transaction by which the exchange was effected, the name and address of the transferee, and the consideration, if any, given or received by the decedent in addition to the property received from the prior estate. If the exchange was made by written instrument of public record, a precise reference must be made to the record containing the instrument, and if by instrument not of record a copy of the instrument must be supplied. If there was no written instrument, an affidavit as to the facts of the exchange by one or more persons having personal knowledge of the matter must be furnished.

If at the time of exchange the decedent gave a consideration in addition to the property received from the prior estate, and acquired property of greater value than the property so received, there may be deducted the proportion

of the value of the property received in exchange which the value of the original property bears thereto.

#### CHARITABLE AND SIMILAR BEQUESTS.

(SEC. 403. That for the purpose of the tax the value of the net estate shall be determined —

(a) In the case of a resident, by deducting from the value of the gross estate—)

(3) The amount of all bequests, legacies, devises, or gifts, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

ART. 53. PUBLIC, CHARITABLE, AND SIMILAR BEQUESTS.— Bequests to religious, charitable, scientific, literary, or educational corporations are deductible only if the corporation is organized or operated exclusively for one of the purposes specified (see Art. 54). Similarly, in the case of a trust, the trust must be exclusively for such purposes. It does not prevent deduction, however, that the property placed in trust is also subject to another trust for a private purpose. Thus, where money or property is placed in trust to pay the income to an individual during life, and then to pay or deliver the same to a charitable corporation, or apply the principal to a charitable purpose, the charitable bequest or devise forms the basis for a deduction. The amount of the deduction, in such case, is the value, at the date of the decedent's death, of the remainder interest in the money or property which is devised or bequeathed to charity. For the manner of determining the value of such remainder interest, see Article 20. Gifts made in the decedent's life-

time are deductible only if made in contemplation of death, or intended to take effect at or after death, and the property is consequently included in the gross estate. Gifts made in satisfaction of a legacy are also deductible. The deduction is not limited in the case of the estates of residents to bequests to domestic corporations or to trustees for use within the United States.

ART. 54. RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL CORPORATIONS.—In order to be exempt the corporation or association must meet three tests: (1) it must be organized and operated for one or more of the specified purposes; (2) it must be organized and operated *exclusively* for such purposes; and (3) no part of its income must inure to the benefit of private stockholders or individuals.

(1) Charitable corporations include an association for the relief of the families of clergymen, even though the latter make a contribution to the fund established for this purpose; or for furnishing the services of trained nurses to persons unable to pay for them; or for aiding the general body of litigants by improving the efficient administration of justice. Educational corporations include an association whose sole purpose is the instruction of the public, even if it merely disseminates propaganda on a single question. Thus an association inculcating prohibition or protectionist principles is exempt. The same is true of an association to promote acquaintance with the Spanish language and literature, although it has incidental amusement features; of an association to increase knowledge of the civilization of another country; and of a Chautauqua association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, and whose amusement features are incidental to this purpose. Societies designed to encourage the performance of first-class orchestral music are not exempt, the pur-



pose being merely to provide a high grade of entertainment. Scientific corporations include an association for the scientific study of law, to the end of improvement in its administration.

(2) Where a religious corporation owns a large quantity of farm land and works it, and also manufactures and sells clothing and other articles for profit, it is not operated exclusively for religious purposes and is not exempt, even though its property is held in common and its profits do not inure to the benefit of individual members of the society.

(3) It does not prevent exemption that private individuals, for whose benefit a charity is organized, receive the income of the corporation or association. The statute refers to individuals having a personal and private interest in the activities of the corporation, such as stockholders. If, however, a corporation issues "voting shares," which entitle the holders upon the dissolution of the corporation to receive the proceeds of its property, including accumulated income, the right to exemption does not exist, even though the by-laws provide that the shareholders shall not receive any dividend or other return upon their shares.

ART. 55. PROOF OF EXEMPTION.—In order to prove his right to this deduction the executor must submit:

(1) Certified copy of the will of the decedent, or the instrument of gift in the case of a transfer of property in contemplation of death.

(2) A receipt, statement, or other documentary evidence to show the beneficiary's receipt of, or intention to accept, the legacy, devise, or gift.

(3) Affidavit of the executor stating whether any action has been instituted to contest the will, or whether, according to his information and belief, any such action is contemplated.

(4) Such other document or evidence as may be specified by the Bureau.

ART. 56. **CONDITIONAL BEQUESTS.**— Where the bequest, legacy, devise, or gift is dependent upon the performance of some act, or the happening of some event, in order to become effective it is necessary that the performance of the act or the occurrence of the event shall have taken place before the deduction can be allowed. Where, by the terms of the bequest, devise or gift, it is subject to be defeated by a subsequent act or event, no deduction will be allowed.

ART. 57. **EFFECTIVE DATE.**— The deduction may be claimed by the estates of all decedents dying after December 31, 1917. Where the tax has been paid without taking the deduction a claim for refund may be made, as provided by Article 110.

#### **SPECIFIC EXEMPTIONS.**

(SEC. 403. That for the purpose of the tax the value of the net estate shall be determined —

(a) In the case of a resident, by deducting from the value of the gross estate— )

(4) An exemption of \$50,000;

ART. 58. **SPECIFIC EXEMPTION.**— There may be deducted from the gross estate of all resident decedents a specific exemption of \$50,000. No part of this exemption is allowed in the case of nonresident decedents. (See Art. 59.) If more than one return is made for purposes of the tax, the exemption may be taken only once.

#### **DEDUCTIONS IN THE CASE OF NONRESIDENT ESTATES.**

(SEC. 403. That for the purpose of the tax the value of the net estate shall be determined — \* \* \*)

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States —

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part

of his gross estate which at the time of his death is situated in the United States; \* \* \*

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent, and the amount receivable as insurance upon the life of a nonresident decedent where the insurer is a domestic corporation, shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (c) of section 402, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

ART. 59. MANNER OF MAKING DEDUCTIONS.—The gross estate of a resident and of a nonresident are made up in the same way. In ascertaining the net estate, however, which is subject to tax, there is a radical difference between the two cases. Whereas the net estate in the case of a resident is determined by making the specified deductions from the entire gross estate, the net estate in the case of a nonresident is determined by making the deductions from the value of so much of the gross estate as is situated in the United States. Thus, in substance, the statute attempts to tax only the transfer of so much of the estate of a nonresident as is situated in the United States. On the other hand, nonresident estates are not entitled to the specific exemption of \$50,000.

ART. 60. SITUS OF PROPERTY.—The situs of property, both real and personal, for the purpose of the tax is its actual situs. Stock in a domestic corporation, and insurance payable by a domestic insurance company, constitute property situated in the United States, although owned by, or payable to, a nonresident. A domestic corporation or insurance company is one created or organized in the United States. Bonds actually situated in the United States, moneys on deposit with domestic banks and moneys due on open accounts by domestic debtors constitute property subject to tax.

Where insurance is payable to the estate, all insurance in

domestic companies should be included in the gross estate. Where insurance is payable to individuals other than the executor, there should be included in the gross estate only the excess of domestic insurance over the sum of \$40,000. Foreign insurance is not considered.

Example: The testator leaves \$30,000 of insurance in domestic companies and \$30,000 of insurance in foreign companies, payable in each case to individual beneficiaries. As the domestic insurance does not exceed \$40,000, there is nothing to be included in the gross estate.

Example: The testator leaves \$50,000 of insurance in domestic companies and \$50,000 of insurance in foreign companies, payable in each case to individual beneficiaries. There should be included in the gross estate \$10,000 being the excess of the domestic insurance over \$40,000.

Any property of which the decedent has made a transfer, or with respect to which he has created a trust, in contemplation of, or to take effect at or after, death, is deemed to be situated in the United States if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

ART. 61. DEDUCTION FOR CLAIMS AND EXPENSES.—The character of the deduction is the same as in the case of resident estates (see Arts. 37 to 49). It is immaterial whether the expenditures are incurred or paid in this country or elsewhere. The deduction, however, is subject to limitations which do not apply in the case of a resident estate. Only that proportion of the claims and expenses is deductible which the value of the property situated in the United States bears to the value of the entire gross estate, wherever situated; and in no event may a sum be deducted in excess of 10 per cent of the value of the property situated in the United States. This 10 per cent limitation does not apply to the deductions subsequently considered. (See Arts. 62, 63.)

(SEC. 403. That for the purpose of the tax the value of the net estate shall be determined — \* \* \*

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States —)

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within five years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under the Revenue Act of 1917 or under this Act was collected from such estate, and if such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States; and

ART. 62. PROPERTY PREVIOUSLY TAXED.— The value of property owned by a nonresident person dying after October 3, 1917, or forming part of the gross estate of the decedent, may be deducted within the limitations prescribed with reference to resident estates (see Art. 50), and subject to the further condition that the property shall have been situated in the United States at the time of the death of the second decedent. The detailed rules for deductions in the case of nonresident estates are consequently as follows:

(1) That the two deaths occurred within five years of each other.

(2) That the first decedent died after October 3, 1917, and that the second decedent died after February 24, 1919.

(3) That an estate tax has actually been collected from the estate of the first decedent (the mere filing of a return not being sufficient).

(4) That the property originally received from the prior estate has been returned as part of the gross estate of the prior decedent, and that the property sought to be deducted is either the identical property so returned or was taken in exchange for such property; and

(5) That the property sought to be deducted shall have

been situated in the United States at the time of the death of the present decedent.

For the rules for determining when property is acquired in exchange, within the meaning of the statute, see Article 52.

(SEC. 403. That for the purpose of the tax the value of the net estate shall be determined — \* \* \*

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States —)

(3) The amount of all bequests, legacies, devises, or gifts, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes within the United States. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

\* \* \* No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 404 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States. \* \* \*

In the case of any estate in respect to which the tax under existing law has been paid, if necessary to allow the benefit of the deduction under paragraph (3) of subdivision (a) or (b) the tax shall be redetermined and any excess of tax paid shall be refunded to the executor.

ART. 63. PUBLIC, CHARITABLE, OR SIMILAR GIFTS.— Where the bequest is to a corporation, it is limited to a domestic corporation; that is, one created or organized in the United States. Where the bequest is to a trustee, it must be for use exclusively within the United States. The requirements are different and should not be confused. The first relates to the character of the donee; the second to the character of the use of the gift. With these exceptions the rules for deduction are the same as in the case of resident estates (see Arts. 53, 54).

This deduction applies to the estates of all decedents dying after December 31, 1917. In the case of any estate entitled to the deduction which paid the tax without receiving the benefit of the right, the excess tax will be refunded upon filing of claim for refund.

ART. 64. DETERMINATION OF NET ESTATE.—The following example will show the manner of determining the net estate, subject to tax, of a nonresident decedent. The gross estate of the decedent, wherever situated, amounts to \$1,000,000, of which the property in the United States, Hawaii, and Alaska amounts to \$200,000. The total legal deduction for claims and expenses (see Art. 61) amounts to \$75,000; and there are charitable bequests, for use within the United States, amounting to \$25,000. Inasmuch as the property in the United States, Hawaii, and Alaska constitutes 20 per cent of the entire gross estate, one-fifth of the total deductions for claims and expenses is the proportionate share corresponding to this property. This proportion amounts to \$15,000; and as this amount does not exceed ten per cent of the property situated in the United States, Hawaii, and Alaska, the entire amount is deductible. The following result is accordingly obtained:

Gross estate within the United States.....	\$200,000	
Proportion of deductions for claims and ex-		
penses under subdivision 1.....	15,000	
Charitable bequests in United States.....	25,000	
		<hr/>
		40,000
		<hr/>
Net estate subject to tax.....	\$160,000	

The tax on this amount should be computed in the manner previously provided for residents estates. (See Art. 8.)

In the example given, if the total legal deductions for claims and expenses had amounted to \$150,000, the proportionate amount of deductions, \$30,000, would not have been deductible, inasmuch as this would have exceeded ten per cent of the property in the United States, Hawaii, and

Alaska. In such case the total amount of the deductions allowable for claims and expenses would have been ten per cent of the gross estate within the United States, or \$20,000, making, with the charitable bequests of \$25,000, a total deduction of \$45,000. The net estate subject to tax would accordingly have been \$155,000, instead of the amount given in the example.

ART. 65. PAYMENT OF TAX.—The regulations with reference to rates of tax and payment are the same in the case of estates of nonresidents as of residents. The statute provides that the executor shall pay the tax. If no executor or administrator has been appointed in the United States, every person in the United States in possession of any part of the decedent's gross estate is constituted an executor for the purpose of tax payment, and is liable for the tax upon the transfer of the portion of the gross estate in his possession. All checks should be made payable to the order of the Commissioner of Internal Revenue. Such checks should be certified. Acceptance of the check discharges the tax only in case subsequent investigation and audit disclose that the correct amount has been paid. (See Art. 90.)

#### SIXTY-DAY NOTICE — RESIDENT ESTATES.

SEC. 404. That the executor, within sixty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector.

ART. 66. WHEN NOTICE REQUIRED.—A preliminary notice, called the 60-day notice, is required to be filed in the case of every resident decedent who died on or after February 25, 1919, the gross amount of whose estate exceeds \$50,000. This notice must be filed in duplicate with the collector in whose district the decedent had his domicile at the time of death. Where there is doubt as to whether the gross estate exceeds \$50,000, the notice should be filed, as matter of precaution, in order to avoid penalties.



Prior to February 25, 1919, the notice was required if the gross estate exceeded \$60,000, or if there was any net estate after the deductions allowed by law, including the \$50,000 exemption, had been taken. These provisions are not now in effect except to determine delinquency under previous acts.

In the case of the estates of nonresident decedents, notice is required if there is any property situated in the United States, without reference to its value.

ART. 67. NOTICE BY EXECUTOR OR ADMINISTRATOR.—The executor or administrator of an estate is required to file notice on Form 704 within 60 days of his appointment by the court, or of coming into possession of any property of the estate, whichever event occurs first. The primary purpose of the notice is to advise the Government of the existence of taxable estates, and filing should not be delayed beyond the 60-day period because of uncertainty as to the exact value of the assets. Since the filing of the notice within the prescribed period is mandatory, the estimate of the gross estate called for by the notice is merely the best approximation of value which can be made within the time allowed. The instructions upon the back of the form should be read carefully before executing the notice. The signature of one executor or administrator upon Form 704 is sufficient. For penalties for delinquency in filing notice, or filing of false or fraudulent notice, see Articles 103 and 104.

ART. 68. NOTICE BY OTHERS THAN THE EXECUTOR OR ADMINISTRATOR.—The notice upon Form 704 must be filed by others than the executor or administrator if either of the following situations exists:

- (1) No executor or administrator has been appointed.
- (2) There is property included in the gross estate, as defined by statute, which has not, and will not, come into the custody and control of the executor.

In these cases, the persons in possession of the property

included in the gross estate are executors, within the meaning of the statute, for the purpose of filing the notice.

ART. 69. NOTICE WHEN NO EXECUTOR APPOINTED.— Where no executor or administrator has been appointed, the person taking possession of property at the time of death is required to file notice within 60 days of the date of death. The notice must be filed whether possession of the property was held at the date of death, or was acquired thereafter. The notice on Form 704 must be filed by such persons in any case where an executor or administrator has not been appointed within 60 days of the decedent's death, although one is appointed subsequently. Where an executor or administrator is appointed within the 60-day period, the duty of filing the notice devolves upon him; and all other persons are relieved from liability to file with respect to property coming into the custody and control of the executor or administrator.

ART. 70. NOTICE WHERE PROPERTY NOT WITHIN EXECUTOR'S CONTROL.— Where there is property that will not come into the custody and control of the executor, but which is included in the gross estate as defined by the statute, the notice on Form 704 must be filed within 60 days of the date of death by the person in possession or control of the property at the time of death.

The persons required to file Form 704, in compliance with this requirement, include the following:

(1) The surviving husband or wife in the case of property owned as tenants in the entirety.

(2) Donees who have received within two years prior to the decedent's death any gift of material value from the decedent, or who have received at any time whatever gifts made by the decedent in contemplation of death or intended to take effect at or after death.

(3) Trustees holding property conveyed during lifetime by decedent in contemplation of death, or with intent to provide for others at or after the decedent's death, regardless

of the date of execution of the instrument making the conveyance.

(4) Fiduciaries holding property of any kind jointly for the decedent and another or others. Example: A savings bank holding a joint account in the name of the decedent and another, payable to either or to the survivor, must file Form 704 for the full amount of the account.

(5) Trustees having in charge property over which the decedent exercised a general power of appointment, and which will not come into the possession and control of the executor or administrator.

(6) Beneficiaries other than the executor who receive insurance upon the decedent's life, provided the total amount of the insurance receivable by all such beneficiaries exceeds \$40,000.

The primary duty of filing notice with respect to property which will not come into the executor's control rests upon the person actually in possession at the time of death. It is the duty of the succeeding owner, however, where property of this character is held at the time of death by an agent or fiduciary, to give notice within 60 days of the date of taking possession, unless he finds that notice has already been filed. For example, the appointee of property, under a general power of appointment exercised by the decedent, should file notice within 60 days of receiving possession, unless the notice has already been filed.

ART. 71. INSURANCE COMPANIES' 60-DAY NOTICE.—Sixty-day notice upon Form 787 must be filed by every insurance company which pays insurance upon the life of a resident decedent to beneficiaries other than the executor or administrator in amounts aggregating more than \$40,000, or which has knowledge of insurance payable to such beneficiaries by other insurance companies, aggregating, with amounts payable by the company itself, more than \$40,000. If the proceeds of any policy are payable in the form of an

annuity, the present worth of such annuity, for the purpose of deducting the \$40,000 exemption, should be computed in accordance with the provision of Article 20. Notice should be filed with the collector of the district in which the decedent had his domicile within 60 days of receipt by the company of notification of death. If the insurance company is in doubt as to its liability to give notice, the notice should be filed.

Where insurance is taken out with a foreign branch of a domestic insurance company, the notice should be given by the home office of the company within 60 days of the receipt by the foreign branch of information of the decedent's death.

ART. 72. WHERE MILITARY EXEMPTION CLAIMED 60-DAY NOTICE REQUIRED.—The executors of estates exempted from the tax (see Art. 9) are required to file the 60-day notice with the proper collector in the same manner as the executors of taxable estates. The executor should, in addition, write across the face of the form the words "Military exemption claimed."

#### SIXTY-DAY NOTICE—NONRESIDENT ESTATES.

ART. 73. NONRESIDENT 60-DAY NOTICE.—A 60-day notice on Form 705 should be filed with the Commissioner of Internal Revenue, Washington, D. C., by every executor or administrator appointed in the United States. The notice is necessary if any part of the decedent's gross estate was situated in the United States at the time of death, regardless of the value of that part or of the entire gross estate. If no executor or administrator has been appointed in this country, notice must be filed within 60 days of the date of death by every person in possession of any part of the gross estate in the United States. If such person has no knowledge of the decedent's death within 60 days of its occurrence, he should file this notice immediately upon obtaining

such knowledge. The filing of notice by a foreign executor or administrator does not relieve persons in possession from the duty of filing notice. If there is a delay in the appointment of a local executor or administrator of more than 60 days after the death, persons in possession should file notice. The term "person in possession of property of the decedent" includes the decedent's agents or representatives; donees and transferees or trustees of property transferred in contemplation of death; the surviving owner of property held jointly; safe-deposit companies, warehouse companies, and similar custodians of property in this country of a nonresident decedent; brokers holding as collateral securities belonging to the decedent or investment funds owned by the decedent; banking institutions holding money on deposit or for any specific purpose, such as purchase of goods, if the title rests in the decedent; and debtors of the decedent in this country.

ART. 74. TRANSFER AGENTS' 60-DAY NOTICE.—A 60-day notice upon Form 714 is required to be filed whenever a corporation, its transfer agent, register, or paying agent, is called upon to make a transfer of stocks or bonds, or to pay interest or dividends, to any successor in interest of any nonresident stockholder or bondholder who died after September 8, 1916, unless the transfer is made upon the order of an executor or administrator appointed in the United States. The notice is required for dividends declared prior to the day of death, and for interest which had accrued on bonds prior to the death of the decedent although payable thereafter. Notice should be filed with the Commissioner of Internal Revenue at Washington, D. C., within 60 days of the date of death, or immediately upon receipt of the order of transfer or payment. A transfer agent should be vigilant to report all cases in which the fact of the death of a nonresident appears. Where the securities are received without the personal assignment of the decedent, but with

the transfer order of the foreign executor, it is clear that the case should be reported. Where the securities bear the personal assignment of the decedent, the transfer should be reported if made upon the order of a foreign executor, or if information is received in any other manner that the record owner has died a nonresident of the United States.

ART. 75. IMPORTANCE OF REQUIREMENT.— In order to prevent loss of the tax upon nonresident estates, it is essential that transfer agents should exercise great care in reporting all transfers of the kind described. Their records will be examined from time to time by internal-revenue officers to determine whether this regulation is being strictly complied with. Failure to file notice in the manner prescribed will render the transfer agent liable to a fine.

ART. 76. INSURANCE COMPANIES' 60-DAY NOTICE.— The 60-day notice upon Form 788 must be filed by every domestic insurance company which pays insurance upon the life of the nonresident decedent in any amount either to a foreign executor or administrator, or to individual beneficiaries. The notice should be filed with the Commissioner of Internal Revenue, Washington, D. C., within 60 days of receipt of proof of claim. No notice is required to be filed, if the only insurance paid is receivable by an executor appointed in the United States. If, however, the company is liable to give notice, it is required to report insurance of all classes in order that its statement may be complete.

#### THE RETURN — RESIDENT ESTATES.

SEC. 404. \* \* \* The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section 403; (c) the value of the net estate of the decedent as defined in section 403; and (d) the tax paid or payable thereon; or such part of such information

as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$50,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The commissioner shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

ART. 77. WHEN RETURN REQUIRED — DATE OF FILING.— A return on Form 706 is required in the case of every resident decedent who died on or after February 25, 1919, leaving a gross estate exceeding \$50,000 in value. This return must be filed with the collector in whose district the decedent resided. It must be filed within one year after the date of death, unless an extension is granted, and must be in duplicate. In the case of decedents who died before February 25, 1919, the effective date of the Revenue Act of 1918, the return is required if the gross estate exceeds \$60,000, or if there is any net estate after the legal deductions, including the \$50,000 exemption, have been taken. In the case of estates of nonresidents return is required if the decedent owned any property in the United States regardless of value. (See Art. 88.)

ART. 78. PROCEDURE WHERE NO RETURN HAS BEEN MADE.— The statute provides that if no return is filed for the estate of a decedent, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return. The Commissioner may amend this return from such knowledge or information as he can obtain, through testimony or otherwise. A return so made by the Commissioner, or made by the collector and approved by the Commissioner, is a sufficient basis for assessing the

tax. Where a tax is found to be due upon such a return, the estate will be liable for penalties as well as for the tax.

**ART. 79. INVESTIGATION WHERE RETURN HAS BEEN FILED.—**  
An investigation of every return for estate tax will be conducted to verify the accuracy of the return. The investigation will be made by special officers of the Bureau. The fact that an investigation is made does not reflect upon the competence or good faith of the executor, since investigations are required in all cases as a matter of administrative procedure. The executor should cooperate with the examining officer in order that the full tax liability may be definitely determined and the case closed. During the course of the investigation the examining officer will inspect the books and records of the estate, interview the executor and other persons having knowledge of the decedent's affairs, verify the value of the assets and the amounts of debts and administration expenses, and take such other steps as may be necessary to determine the correct tax.

It is the purpose of the Bureau to make these investigations as soon as practicable after the filing of the return. Whenever there are special and urgent reasons for an early investigation, the collector should be notified in order that the case may be given special attention. Upon completion of the investigation the executor will be apprised by the examining officer of his findings, and will be given an opportunity to discuss the case and present such data as he may desire, to be considered by the Bureau in connection with the examining officer's report. Upon the completion of the review and audit by the Bureau of the return and the examining officer's report, the executor will be informed by letter from the Commissioner of the result of the audit. If the letter contains notification of an unpaid balance of tax, the executor should make payment to the collector. After the expiration of 30 days from receipt of the notification interest will accrue upon the excess tax at the rate of ten



per centum per annum. If the executor wishes to file claim for abatement of any part of the excess tax, such claim must be filed within 30 days of receipt of notification, or he may pay the tax in order to prevent the running of interest, and submit claim for refund.

ART. 80. PERSONS LIABLE FOR RETURN.—The statute provides that the executor or administrator shall file the return. If there is more than one executor or administrator, the return must be made jointly by all. Where no executor or administrator has been appointed, every person in possession of any part of the gross estate is considered to be an executor for the purposes of the tax, and is liable for a return as to the property in his possession. The executor or administrator is required to make a return of the entire gross estate of the decedent, including property which will not come into his possession, such as property transferred by the decedent before death, and property owned by tenants in the entirety. If the executor is unable to make a complete return as to any part of the gross estate, he is required to give all the information he has as to such property, including a full description, and the name of every person holding a legal or beneficial interest in the property. Where the executor is unable to make a return as to any property, the statute requires every person holding a legal or beneficial interest therein, upon notice from the collector, to make return as to such part of the gross estate. For penalties for delinquency in filing return, or filing of false or fraudulent return, see Articles 103 and 104.

ART. 81. EXTENSION OF TIME FOR FILING RETURN.—If it is impossible for the executor to file a complete return within a year from the date of death, he may make application to the collector for an extension of time for filing the return, stating in detail in his application the circumstances which prevent the filing of the return by the due date. If the collector is satisfied that a complete return can not be made,

he may grant extensions of time, not to exceed 180 days from the due date, no single extension exceeding 60 days. At the expiration of the extension period a return must be filed. If at that time it is still impossible to file a complete and accurate return, on account of the unsettled condition of the affairs of the estate, the return filed by the executor must be as complete as possible, and must set forth all the facts in his possession as to the gross and net estate. At the time of filing such return he must pay a sum sufficient in the opinion of the collector to satisfy the tax. Such a return will be accepted by the collector; but the executor must file an amended return as soon as the condition of the estate permits.

ART. 82. EXECUTION OF RETURN.—The return must be made on Form 706, copies of which will be supplied by the collector. It must contain an itemized inventory, by schedule, of the property constituting the gross estate, together with a full statement of deductions claimed, as therein provided. The instructions printed on the form should be carefully followed. All documents and vouchers used in preparing the return should be retained by the executor, so as to be available for inspection whenever required. Certified copies of the will, if any, must be submitted with the return, together with duplicate copies of the other documents required by the instructions printed on the form, or any documents which the executor may desire to submit with the return in explanation thereof.

ART. 83. SUPPLEMENTAL DATA.—The statute provides that the executor, in addition to filing notice and return, shall furnish such supplemental data as may be necessary to establish the correct tax. It is therefore the duty of the executor to furnish upon request copies of any documents in his possession relating to the estate, or on file in any court having jurisdiction over the estate, appraisal lists of any items included in the gross estate, copies of balance

sheets or other financial statements relating to the value of stock, and any other information obtainable by him that may be found necessary in the determination of the tax. Failure to comply with such a request will render the executor liable to a fine not to exceed \$500, and proceedings may be instituted in the proper United States court to secure compliance with the requirement.

ART. 84. SAME — NONRESIDENT ESTATES.— Pursuant to this provision the executor of a nonresident decedent is required to file with the return :

(1) Certified copy of will, or, if the decedent left several wills, to govern in different jurisdictions, certified copy of each will.

(2) Certified copy of inventory of foreign property filed under a foreign estate, succession or death-duty act; or, if no such inventory was filed, copy of inventory filed with the foreign court of probate jurisdiction.

(3) Certified copy of schedule of claims filed under a foreign taxing act in cases where such claims are presented for deduction. If any item of deduction is not included in the schedule, the affidavit of the foreign executor or administrator with reference thereto should be submitted.

The specified information is required whether or not the executor wishes to claim deduction, and is subject to the provision of the statute (see Sec. 403) requiring him to include in his return the value of the gross estate situated in the United States.

#### PRIVILEGED CHARACTER OF RETURNS.

ART. 85. RETURNS CONFIDENTIAL.— All estate tax returns and notices are treated as privileged communications and may not be exhibited to any person other than the executor or his duly authorized attorney, except as stated in Article 86. This requirement of secrecy will be rigidly enforced, and extends to information of a private nature submitted

or obtained in connection with a return or notice. The requirement does not operate to prevent internal revenue officers from disclosing the returned value of any item or the amount of any specific deduction where such disclosure is necessary in order to arrive at a correct determination of the tax. This right of disclosure, however, does not extend to such information as the amount of the estate, the amount of tax, or other general data. Nor are the records in possession of the Bureau, whether on file with the Commissioner or the collector, open to inspection, except as provided herein.

ART. 86. DISCLOSURE TO PERSONS HAVING MATERIAL PERSONAL INTEREST.—Where any person other than the executor has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, he shall make a written application to the Commissioner of Internal Revenue for such information, setting forth the nature of his interest and the purpose of the application. The Commissioner will review the application, and, if it is approved, give written instruction to the collector to exhibit the return to the applicant, or give him such information as is specified. Under no circumstances shall the collector give information to persons other than the executor except upon the written order of the Commissioner, and to the extent authorized by such order.

ART. 87. ATTORNEYS MUST HAVE AUTHORIZATION.—In all cases where information is sought regarding an estate, or an interview asked, by an attorney whose name does not appear on form of 706 as the attorney for the estate, the information or interview will be denied unless the attorney presents a signed statement from the executor, authorizing him to appear in his behalf. The limitation does not apply where an attorney asks a general ruling on a question relating to a specific estate, or where he asks information of the procedure to be followed in regard to filing notice or making

payment. Where an attorney asks for information, or an interview, and his name appears on the return as attorney for the estate, the information or interview will be granted if his identity is established.

#### THE RETURN — NONRESIDENT ESTATES.

**ART. 88. RETURN OF NONRESIDENT ESTATES.**— A return on Form 706 must be filed in duplicate with the Commissioner of Internal Revenue, Washington, D. C., within a year from the date of death if any part of the gross estate of the decedent was situated in the United States at the time of death. It is the duty of any executor or administrator appointed in the United States to file return for the whole of that part of the gross estate situated in the United States, whatever its value. If there is no such executor or administrator, every person in possession of any part of the gross estate in the United States may be required to file a return for such part. Notice will be given to such persons, however, where a return is required; and they are relieved of the duty of filing return by the appointment of an executor or administrator in the United States, not, however, by the appointment of a foreign executor or administrator. If, however, a complete return is actually filed by the foreign executor of property in the United States, the persons in possession need not file a return.

#### RETURN BY COLLECTOR.

**SEC. 405.** That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section 404, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the commissioner shall assess the tax thereon.

Revised Statutes, Sec. 3176 (Comp. Sts., 1916, Sec. 5899).

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make

the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector, and approved by the Commissioner, shall be *prima facie* good and sufficient for all legal purposes.

**ART. 89. RETURN BY COLLECTOR.**—Where the executor fails to file a return, or files an inaccurate one, the collector or deputy collector is required to make a return from such information as he possesses or is able to obtain. In such cases the Commissioner assesses the tax in the same manner as though the return had been filed by the estate.

#### **PAYMENT OF TAX.**

**SEC. 406.** That the tax shall be due one year after the decedent's death; but in any case where the Commissioner finds that payment of the tax within one year after the decedent's death would impose undue hardship upon the estate, he may grant an extension of time for the payment of the tax for a period not to exceed three years from the due date. If the tax is not paid within one year and 180 days after the decedent's death, interest at the rate of 6 per centum per annum from the expiration of one year after the decedent's death shall be added as part of the tax.

**ART. 90. PAYMENT.**—The tax is due and payable one year from the date of death. No discount will be allowed for payment in advance of the due date. The collector will grant to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment, and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts.

Payment will not be accepted before a return in proper form has been filed. Payment of the amount of tax shown to be due by a return accepted by the collector, executed in good faith and accurate so far as the knowledge of the executor extends, will be considered payment of the tax in full except as adjustment of the tax results from investiga-

tion. If at the time payment is made the exact amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax will be considered payment in full except as the tax is adjusted after investigation. (See Arts. 78, 95.) The amount sufficient, in the opinion of the collector, to discharge the tax is such sum as the collector may specify after having received a return in proper form containing an accurate statement of all the information in the executor's possession. If the return filed contains a gross or fraudulent misstatement of fact, the payment of the amount of tax shown to be due thereby will not be deemed to be payment in full of the tax, since the collector's decision is based upon the assumption that the return is made in good faith.

ART. 91. PAYMENT BY BONDS OR UNCERTIFIED CHECK.—Payment of the estate tax may be made by the delivery of Liberty Bonds or other bonds of the United States bearing interest at a higher rate than 4 per cent per annum, provided they were owned by the decedent for at least six months prior to the date of his death. Such bonds are received in payment to the amount of par and interest accrued at the time of the payment. (See T. D. 2802 and T. D. 2905.)

Collectors may accept uncertified checks in payment of the estate tax provided such checks are collectible at par—that is, for their full amount, without any deduction for exchange or other charges. If the bank on which any such check is drawn should refuse to pay it at par, the check should be returned through the depository bank, and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payment of taxes. (See Revised Statutes, Sec. 3210.)

ART. 92. THE EXECUTOR SHALL PAY THE TAX.—The statute provides that the executor shall pay the tax. This duty applies to the tax upon the transfer of the entire estate, including property which will not come into the possession of the executor or administrator. As to the personal liability of the executor, see Article 113.

ART. 93. EXTENTION OF TIME FOR PAYMENT.—In any case where the Commissioner finds that payment of the tax within one year after the decedent's death would impose undue hardship upon the estate, extensions of time will be granted for the payment of the tax for a period not to exceed in all three years from the due date. Extensions of time for tax payment will be granted only in exceptional cases, where it is evident that the payment of the tax within the statutory period would cause the estate serious financial loss. No extension shall be for more than one year, and a substantial payment shall be made before each extension. Application for extension of time for payment should be filed with the collector, and should contain a full statement of the facts upon which the application is based. The collector will refer the application to the Commissioner, with suitable recommendations.

The extension of time for the payment of the tax should not be confused with extension of time for filing the return. An extension of time to pay the tax does not relieve from the duty of filing the return within one year from the date of death. An extension of time for tax payment will not operate to prevent the accrual of interest upon the tax.

ART. 94. INTEREST ON UNPAID TAX.—The statute provides that, if the tax is not paid within one year and 180 days after the decedent's death, interest at six per centum per annum from the expiration of one year after the decedent's death shall be added as part of the tax. This provision applies to the original amount of tax shown to be due by the return accepted by the collector. It applies in all cases



in which penalties have not accrued under the Revenue Act of 1916. (See Art. 120.)

#### ADJUSTMENT OF TAX — INTEREST.

SEC. 407. That the executor shall pay the tax to the collector or deputy collector. If the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid, the collector shall notify the executor of the amount of such excess and demand payment thereof. If such excess part of the tax is not paid within thirty days after such notification, interest shall be added thereto at the rate of 10 per centum per annum from the expiration of such thirty days' period until paid, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

ART. 95. ADJUSTMENT OF TAX AFTER INVESTIGATION.— An investigation of every return for estate tax will be made by an internal-revenue officer, and the tax liability of the estate will be finally determined by the Commissioner upon the basis of such investigation. If at the time the Commissioner's determination is made the tax has been paid upon the basis of the return, an adjustment will be made of the amount of tax. If the amount of tax already paid exceeds the amount of tax as finally determined, the Commissioner will refund such excess payment to the collector. If the amount of tax as finally determined exceeds the amount of tax already paid, the collector will notify the executor of the amount of the unpaid balance of the tax and will demand payment thereof. Payment should be made by the executor immediately upon the receipt of such notification. Where the investigation of the return shows that no further tax is

due, the executor will be notified to this effect. Until the receipt of such notification, he should reserve a sufficient portion of the estate to satisfy any excess tax.

**ART. 96. INTEREST ON ADDITIONAL TAX.**—If an unpaid balance of tax is found to be due by the Commissioner after investigation, the statute provides that interest shall be added to the amount of such excess part of the tax at the rate of ten per centum from the expiration of 30 days after notification to the executor, provided the tax is not paid within such 30-day period. This interest will not begin to accrue, however, until the expiration of one year and 180 days after the decedent's death. (See Art. 94.)

If a return is filed containing a gross or fraudulent misstatement of fact, and payment made of the tax shown to be due thereby, such payment will not be considered payment in full within the meaning of the statute. (See Art. 90.) Consequently, in such a case, interest upon the unpaid balance of tax, determined after investigation, will be added at the rate of six per centum per annum from the expiration of one year after the decedent's death to the expiration of 30 days from notification, and thereafter at the rate of ten per centum per annum until paid.

#### COLLECTION OF TAX.

**SEC. 408.** That if the tax herein imposed is not paid within 180 days after it is due, the collector shall, unless there is reasonable cause for further delay, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. \* \* \*

**ART. 97. REMEDY NOT EXCLUSIVE.**—The remedy by action, here provided for, is not exclusive. For other available remedies for the collection of the tax, see Article 117.

## REIMBURSEMENT.

SEC. 408. \* \* \* If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

ART. 98. RIGHT TO REIMBURSEMENT NOT ENFORCIBLE BY BUREAU.—Two rights are here given. Persons in possession of property, and paying the tax, are entitled to reimbursement, either out of the undistributed estate or by contribution from other beneficiaries, of any excess of the amount paid over the amount of the tax upon the particular property in their possession. The executor is also entitled to require beneficiaries under insurance policies to bear their proportion of the tax. These provisions, however, are not designed to curtail the right of the Bureau to collect the tax from any person, or out of any property, liable therefor. The Bureau may not be required to apportion the tax among the persons liable. For example, where a transfer has been made in contemplation of death, the Bureau may hold both the executor and the transferee liable with respect to the tax upon the property transferred. In such case, if the tax is paid by the executor, he may not look to the Bureau for relief by refund of part of the tax.

**LIEN.**

SEC. 409. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate releasing any or all property of such estate from the lien herein imposed.

ART. 99. PROPERTY SUBJECT TO LIEN.— This lien attaches to every part of the gross estate, whether or not the property comes into the custody or control of the executor. The only property divested of the lien is such part as is used to pay charges against the estate and administration expenses allowed by the court which administers the estate. With this exception, the lien can only be divested by payment. It attaches to the extent both of the original tax shown to be due by the return and of any additional tax found to be due upon investigation. Payment of the entire tax is necessary in order to destroy the lien.

ART. 100. RELEASE OF LIEN.— The statute provides that, if the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may issue his certificate releasing any or all property of the estate from the lien. The issuance of certificates is a matter resting within the discretion of the Commissioner, and certificates will be issued only in case there is actual need therefor. In most cases the receipts issued by the collector constitute sufficient acquittance.

The tax will be considered fully discharged for the purpose of the issuance of a certificate only when investigation has been completed, and payment of the excess tax determined to be due, if any, has been made. A certificate of release of lien may be issued by the Commissioner under these circumstances upon any or all property of the estate,

upon the filing by the executor of an application in duplicate on Form 791. The form must contain all the information called for.

Where the tax liability has not been fully discharged, as provided above, no general certificate of release will be granted, but releases of lien upon particular items of property will be issued upon the filing with the Commissioner of such security, if any, as he may require. Where security is required, a corporate indemnity bond must be furnished, or Liberty Bonds, or other bonds of the United States, must be deposited with the collector. In lieu of such security, the Commissioner may in any case issue the release upon payment of the estimated tax upon the transfer of the property released, computed at the highest rate applicable to the estate. If, upon consideration of the application, the Commissioner finds the issuance of the certificate to be warranted, the collector will notify the executor of the amount of the bond, as fixed by the Commissioner.

#### REMEDY AGAINST TRANSFEREE AND INSURANCE BENEFICIARY.

SEC. 409. \* \* \* If (a) the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) or (b) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

ART. 101. REMEDY IN CASE OF PROPERTY TRANSFERRED BY DECEDENT, OR OF INDIVIDUAL INSURANCE.—The amounts of the

lien and of the personal liability of the transferee, trustee, or insurance beneficiary are limited to the amount of the tax upon the transfer of the particular property in the possession of the person liable. Where the transferee or trustee sells the property to a *bona fide* purchaser for a fair consideration in money or money's worth, the lien upon such property is divested; but there is substituted a lien upon *all* of the property of the transferee or trustee, except such part as may be sold to a *bona fide* purchaser for a valuable consideration.

#### PENALTIES.

SEC. 410. That whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

Whoever fails to comply with any duty imposed upon him by section 404, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

Revised Statutes, Sec. 3176 (Comp. Sts., 1916, Sec. 5899) \* \* \*  
In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner of Internal Revenue shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner of Internal Revenue shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

ART. 102. NATURE OF PENALTIES.—Two kinds of penalties are provided for delinquency with respect to the duties imposed by the estate tax law:

(1) A specific penalty, to be recovered by suit, unless adjusted by an offer in compromise; and

(2) A penalty of a certain percentage of the tax, to be added to the tax and collected in the same manner as the tax.

In any case of delinquency for which more than one penalty is provided the Government may impose either or both penalties.

ART. 103. PENALTIES FOR FALSE AND FRAUDULENT NOTICE OR RETURN.—Where statements in the 60-day notice or in the return are knowingly and willfully false, the person making them is subject to a penalty of \$5,000, or imprisonment for one year, or both; and, for the false return, 50 per cent may be added to the amount of the tax.

ART. 104. PENALTY FOR FAILURE TO FILE NOTICE OR RETURN.—For failure to file the 60-day notice or the return within the time prescribed, the person in default is subject to a penalty not to exceed \$500; and, for the failure to file the return, 25 per cent may be added to the amount of the tax. Where it appears, however, that the failure to file the return was due to a reasonable cause and not to willful neglect, no addition is made to the tax.

ART. 105. PENALTY FOR FAILURE TO EXHIBIT RECORDS OR PROPERTY.—Where a person in possession or control of any record, file, or paper, supposed to contain information relating to the estate, fails to exhibit the same, upon the request of the Commissioner or any collector, he is liable to a penalty not to exceed \$500, to be recovered by civil action. He must comply with such a request whether or not he believes that the documents contain information relating to the estate. A person in possession of property forming part of the gross estate, and refusing to exhibit the

same upon the request of the Commissioner or a collector, is subject to a similar penalty.

#### CLAIMS FOR ABATEMENT AND REFUND.

Revised Statutes, Sec. 3220 (Comp. Sts., 1916, Sec. 5944). The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section.

Revised Statutes, Sec. 3225 (Comp. Sts., 1916, Sec. 5948). When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, or recovered by any suit, unless it is proved that such list, statement, or return was not willfully false or fraudulent and did not contain any willful understatement or undervaluation.

ART. 106. GENERAL PROVISIONS.—Under these provisions of law two forms of relief are afforded the executor in cases where he believes that an excessive amount of tax has been assessed against or paid by him, either upon the basis of the return or of the investigation conducted by the Bureau. The two forms of relief are:

- (1) Claim for abatement on Form 47 where the tax has been assessed but not paid.
- (2) Claim for refund on Form 46 where the tax has been paid.

ART. 107. CLAIM FOR ABATEMENT.—Claims for the abatement of taxes or penalties illegally assessed must be made upon Form 47, and must be sustained by the affidavits of



the parties against whom the taxes were assessed or of other parties cognizant of the facts. When a tax has been assessed, the presumption is that the assessment is correct; and the burden of showing that it was improperly or illegally assessed rests upon the applicant for abatement. The affidavit must therefore contain a full and explicit statement of all the material facts relating to the claim in support of which they are offered and which are essential to proper consideration. Nothing should be left to inference, but all the facts relied upon should appear upon the papers themselves. The filing of a claim for the abatement of a tax alleged to have been erroneously assessed does not necessarily operate as a suspension of the collection of the tax. The collector may collect the tax if he thinks it necessary, and leave the taxpayer to his remedy of a claim for refund.

ART. 108. ACCRUAL OF INTEREST AS AFFECTED BY ABATEMENT CLAIM.—Where a claim for abatement is rejected, the making of the application does not affect the running of interest. The allowance of the claim, however, in whole or part, discharges all interest obligations upon the portion of the claim allowed. The same rules apply where, upon the request of the executor, a reinvestigation is made of the amount of an additional tax.

ART. 109. LIMITATION OF TIME TO FILE CLAIM FOR ABATEMENT OF EXCESS TAX.—If it is desired to file claim for abatement of the excess amount of tax disclosed upon investigation, such claim should be filed with the collector within 30 days of receipt of the Commissioner's letter of notification. After that period the claim will not be considered, but the tax must be paid, and adjustment made by claim for refund.

ART. 110. CLAIM FOR REFUND.—Claims for refund of assessed taxes and penalties must be made on Form 46. In this case, as in the case of claims for abatement, the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under

oath. With the claim should be presented, in addition to the evidence:

(1) Collector's receipt evidencing payment of tax.

(2) Where the claim is made by the executor or administrator, a certified copy of the letters testamentary or of administration, and a certificate that the appointment remains in full force and effect.

(3) Where the executor or administrator has been discharged, a certified copy of the decree discharging him, and evidence as to the persons entitled to receive the refund, setting forth their names. Where the claim is made on behalf of a number of persons, there should be furnished a power of attorney duly executed by all the beneficiaries showing the claimant's authority to act in their behalf.

ART. 111. PAYMENT OF CLAIMS.—Warrants in payment of claims allowed will be drawn in the names of the parties entitled to the money, and will, unless otherwise directed, be sent by the Treasurer of the United States directly to the proper parties, or their duly authorized attorneys or agents; but if the claimants are indebted to the United States for taxes such taxes must be paid before the warrants are delivered.

#### POWER TO COMPROMISE OR REMIT PENALTIES.

Revised Statutes, Sec. 3229 (Comp. Sts., Sec. 5952). The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

Revised Statutes, Sec. 5292 (Comp. Sts., 1916, Sec. 10,130). Whenever any person who shall have incurred any fine, penalty, or forfeiture, or disability \* \* \* shall prefer his petition to the judge of the district in which such fine, penalty, or forfeiture, or disability has accrued, truly and particularly setting forth the circumstances of his case, and shall pray that the same may be mitigated or remitted, the judge shall inquire, in a summary manner, into the circumstances of the case; first causing reasonable notice to be given to the person claiming such fine, penalty, or forfeiture, and to the attorney of the United States for such district, that each may have an opportunity of showing cause against the mitigation or remission thereof; and shall cause the facts appearing upon such inquiry to be stated and annexed to the petition, and direct their transmission to the Secretary of the Treasury. The Secretary shall thereupon have power to mitigate or remit such fine, forfeiture, or penalty, or remove such disability, or any part thereof, if, in his opinion, the same was incurred without willful negligence, or any intention of fraud in the person incurring the same; and to direct the prosecution if any has been instituted for the recovery thereof, to cease and be discontinued, upon such terms or conditions as he may deem reasonable and just.

Revised Statutes, Sec. 5293 (Comp. Sts., 1916, Sec. 10,131). The Secretary of the Treasury is authorized to prescribe such rules and modes of proceeding to ascertain the facts upon which an application for remission of a fine, penalty, or forfeiture, is founded, as he deems proper, and, upon ascertaining them, to remit the fine, penalty, or forfeiture, if in his opinion it was incurred without willful negligence or fraud, in either of the following cases:

First. If the fine, penalty, or forfeiture was imposed under authority of any revenue law, and the amount does not exceed \$1,000.

**ART. 112. POWER TO COMPROMISE OR REMIT.**—The Commissioner, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon, and with the advice and consent of the Secretary, and upon the recommendation of the Attorney General, may compromise any such case after suit thereon has been commenced by the United States. Accordingly, the power to compromise extends to (a) both civil and criminal cases; (b) cases whether before or after suit; and (c) both taxes and penalties. Refunds can not be made of accepted offers in compromise in cases where it is subsequently ascer-

tained that no violation of law was involved. No power exists, however, to compromise a tax where its existence and amount are not disputed in good faith, and the taxpayer is solvent. Where a fine, penalty, or forfeiture, not exceeding \$1,000, is incurred without willful negligence or fraud, it may be remitted by the Secretary of the Treasury; and he may remit other fines, penalties, forfeitures, and disabilities where the court has inquired into the matter and made findings.

#### PERSONAL LIABILITY OF EXECUTOR.

Revised Statutes, Sec. 3467 (Comp. Sts., 1916, Sec. 6373). Every executor, administrator, or assignee, or other person, who pays any debts due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

ART. 113. EXTENT OF LIABILITY.—The executor is personally liable for the payment of the estate tax to the amount of the full value of the assets of the estate which have at any time come into his hands. (See also Revenue Act of 1918, Sec. 407.) Where no executor or administrator has been appointed, every person in possession of any part of the gross estate is liable for the tax as an executor.

#### EXAMINATION OF RECORDS AND TAKING OF TESTIMONY.

SEC. 1305. \* \* \* The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any revenue agent or inspector designated by him for that purpose, to examine any books, papers, records or memoranda bearing upon the matter required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

SEC. 1318. That if any person is summoned under this Act to appear, to testify, or to produce books, papers or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

ART. 114. SECURING EVIDENCE — TAKING OF TESTIMONY.— In order to ascertain the correctness of a return, or to make a return where none has been made, the Commissioner has power to require the attendance, and to take the testimony, of the person rendering the return, or any officer or employee of such person, or any other person having knowledge in the premises. Such person may be required to produce any relevant book, paper or other record. This power may be exercised by any revenue agent or inspector designated for the purpose.

ART. 115. POWER TO COMPEL COMPLIANCE.— Where any person is summoned to appear and testify, or to produce books, papers, or other data, the District Court of the United States for the district in which such person resides has power to compel the giving of the testimony, or the production of the books, papers, or data, and to issue any appropriate process, writ, or order.

#### REMEDIES FOR COLLECTION.

SEC. 1305. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns,

and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

**ART. 116. REMEDIES FOR COLLECTION OF TAX.**—The provision of the statute quoted above applies to the estate tax law; and three remedies are thus provided for the collection of the tax:

(1) *Collection by distraint.*—The collector may issue warrant of distraint authorizing the seizure and sale of any or all of the assets of the estate. (See R. S., Secs. 3187 et seq.; Comp. Sts., 1916, Sec. 5090 et seq.)

(2) *Collection by suit to subject the property to sale.*—The collector may commence in any court of the United States appropriate proceedings, in the name of the United States, to subject the property of the decedent to sale under the judgment or decree of the court. (See Sec. 408; Art. 97.)

(3) *Collection by suit for personal liability.*—The personal liability of the executor, of the transferee or trustee of property transferred in contemplation of death, and of the beneficiary of taxable life insurance (See Art. 101) may be enforced by any appropriate action.

**ART. 117. EXECUTOR'S DUTY TO KEEP RECORDS.**—It is the duty of the executor to keep such records as the Commissioner may require. Executors are required to keep complete and detailed records of the affairs of the estate, sufficient to enable the Bureau to determine accurately the amount of the tax liability.

**ART. 118. EXECUTOR'S DUTY TO RENDER STATEMENTS.**—It is also the duty of the executor not only to make the formal return, but also to render any other sworn statement which the Commissioner may require for the purpose of determining whether a tax liability exists.

## SCOPE OF REPEAL.

SEC. 1400. (a) That the following parts of Acts are hereby repealed, subject to the limitations provided in subdivision (b): \* \* \*

Title II (called "Estate Tax"); \* \* \*

(b) Such parts of Acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forfeitures which have accrued and may accrue in relation to any such taxes. \* \* \*

*Provided further,* That the assessment and collection of all estate taxes, and the imposition and collection of all penalties or forfeitures, which have accrued under Title II of the Revenue Act of 1916 as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917, or Title IX of the Revenue Act of 1917, shall be according to the provisions of Title IV of this Act. In the case of any tax imposed by any part of an Act herein repealed, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

ART. 119. SCOPE OF REPEAL.—The Revenue Act of 1918 retains in force all taxes or penalties which had accrued prior to February 25, 1919. The *procedure*, however, with reference to the assessment and collection of all taxes, whenever they accrued, is governed by the statute from the time when it went into effect on February 25, 1919.

ART. 120. INTEREST UNDER REVENUE ACT OF 1916.—The Revenue Act of 1916 provides that, where the tax is not paid within one year and 90 days from the date of the decedent's death, interest shall be added at the rate of ten per centum per annum from the date of death. Where the specified period had elapsed prior to February 25, 1919, this penalty has been incurred, and is not affected by the passage of the Revenue Act of 1918. Where, however, the period of one year and 90 days had not elapsed prior to February 25, 1919, the Revenue Act of 1918 extends the time of payment to one

year and 180 days from the date of death. These rules operate as follows:

Example: The year and 90 days, in a given case, expired on February 15, 1919, or ten days before the effective date of the Revenue Act of 1918. In this case interest at the rate of ten per centum per annum should be computed for the period of one year and 100 days from the date of death, or until the Revenue Act of 1918 took effect. If the tax is thereafter paid within the time prescribed by the new act (which allows an additional 80 days), no further interest accrues. If it is not paid within that period, additional interest accrues at the rate of six per cent from February 25, 1919, when the Revenue Act of 1918 took effect.

Example: On February 25, 1919, in a given case, only one year and 80 days from the date of the decedent's death had elapsed. No penalty having been incurred, the estate has 100 additional days in which to make payment, viz, the year and 180 days prescribed by the Revenue Act of 1918. If, however, the tax is not paid within this period, interest accrues at the rate of six per cent from the expiration of one year from the decedent's death, as provided by the Revenue Act of 1918 (see Art. 94).

ART. 121. REPEAL OF PREVIOUS REGULATIONS.—The foregoing regulations are prescribed in pursuance of the authority conferred by the statute, and all rulings inconsistent with them are hereby revoked.

DANIEL C. ROPER,

*Commissioner of Internal Revenue.*

Approved: August 8, 1919.

CARTER GLASS,

*Secretary of the Treasury.*



**8. Federal Forms.****SIXTY-DAY NOTICE — ESTATE OF RESIDENT.**

To be filed in duplicate by executor or person in possession of property.  
(Observe instructions on reverse side.)

District .....  
Date filed .....

Name of decedent .....  
Date of death .....  
Place of death .....  
Residence .....

....., 19.....  
COLLECTOR OF INTERNAL REVENUE,  
.....

1. I, ....., pursuant to the requirements of section 404 of the Revenue Act of 1918, approved February 24, 1919, hereby give notice that:

(Fill in (a) or (b) as facts warrant.)

(a) I qualified as execut.....administrat.....of the estate of the above-named decedent in the ..... Court at ..... on the ..... day of ....., 19....

(b) I had actual or constructive possession of property or an interest in property which constituted a part of the gross estate of the above-named decedent on date of death, or I came into possession of such property on the ..... day of ....., 19...., which has not passed into the charge of an executor or administrator. The description and approximate value of such property at the time of death were as follows:

Description.	Value
.....	\$.....
.....	.....
.....	.....

(Attach schedule if more space is required.)

2. To the best of my knowledge the value of the gross estate of the decedent exceeds \$50,000, and the approximate values of the various classes of property comprising the gross estate at date were as follows:

Real estate .....	\$.....
Stocks and bonds .....	.....
Miscellaneous personalty .....	.....
Property transferred (see Instructions 5 (c)) .....	.....
Property owned jointly .....	.....
Life insurance for benefit of estate .....	.....
Other life insurance .....	.....

(Estimated values will be accepted.) Total....

That the names and addresses of the legal representatives of the estate and their attorneys insofar as known to me are:

	Name.	Address.
Executors	{	.....
Administrators		.....
		.....
Attorneys	{	.....
		.....

I HEREBY CERTIFY that I have carefully read the instructions on the reverse side of this form and that all the statements made herein are correct to the best of my knowledge and belief.

Signature .....

Designation .....

(See paragraph 2 of instructions on back)

Address .....

### Instructions.

1. *Estates subject to notice.*—This notice must be filed for the estates of all resident decedents, the gross value of which, as defined by the law, exceeds \$50,000.

2. *Persons required to file notice.*—Where an executor or administrator has been appointed by court decree, he must file the notice, which must contain a statement of all the property constituting the gross estate of the decedent. Except as hereinafter mentioned, all persons having possession of any property of the decedent at the time of his death, or acquiring possession thereafter, must file this notice. This requirement applies to agents, bankers, beneficiaries, brokers, custodians, debtors, factors, fiduciaries, guardians, joint owners, partners, safe-deposit companies, transferees, trustees, warehouse companies, and all other persons having possession of property constituting part of the gross estate of the decedent. Such persons are relieved of the duty of filing notice only where the executor or administrator has, within the time prescribed, filed a notice including the property in the possession of such persons. In case of doubt, the notice should be filed.

The notice may be executed by one executor or administrator.

3. *Time of filing notice.*—An executor or administrator, appointed by court decree, must file the notice within sixty days after his qualification. Persons having possession of the property of the decedent, when required to file notice, must file the same within sixty days after receiving information of the decedent's death. Where possession of the property was obtained after the decedent's death, the notice must be filed within sixty days after taking possession.

4. *Place of filing.*—This notice must be filed with the Collector of Internal Revenue for the district of which the decedent was a resident at time of death.

5. *Gross estate.*—The gross estate as defined by section 402 of the Revenue Act of 1918, approved February 24, 1919, includes—

- (a) Property which after decedent's death is subject to payment of charges, to expenses of administration, and to distribution as a part of his estate.
- (b) Interest of surviving spouse, as dower, courtesy, or estate in lieu thereof.
- (c) Property transferred or placed in trust in contemplation of, or intended to take effect in possession or enjoyment at or after death.
- (d) Property held jointly or as tenants in the entirety.
- (e) Property passing under a general power of appointment exercised by decedent.
- (f) (1) Insurance payable to a decedent's estate, his personal representatives, or to any person for the benefit of the estate.
- (2) Insurance payable to beneficiaries, in excess of \$40,000.

6. *Lien.*—The tax is a lien for ten years upon the entire gross estate, except such part of it as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction.

7. *Penalties.*—The penalty for knowingly making any false statement in this notice is a fine not to exceed \$5,000, or imprisonment, or both. Penalty for failure to file notice as required is a fine not to exceed \$500, and cost of suit.

8. *Delinquency.*—In the event of failure to file this notice within the sixty days prescribed by law, a detailed explanation under oath should accompany notice when filed.

# SIXTY-DAY NOTICE FOR INSURANCE COMPANIES—ESTATE OF RESIDENT.

This notice must be filed in duplicate. (Observe instructions on reverse side.)

District .....

Date filed .....

Name of decedent .....

Date of death .....

Place of death .....

Residence .....

....., 19 .....

COLLECTOR OF INTERNAL REVENUE,

1. The undersigned insurance company organized in the United States, pursuant to the requirements of section 404 of the Revenue Act of 1918, approved February 24, 1919, hereby gives notice that on the ..... day of ....., 19...., it received information of the death of the above-named decedent and that the facts in regard to insurance issued by it on the life of such decedent are correctly set forth in the following statement:

Policy No.	Face value.	Amount payable.	To whom payable.	Address.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

(Attach schedule if more space is required.)

2. That the records of this company indicate that the decedent had life insurance in other companies or organizations as follows:

Company.	Address.	Amount of policy.
.....	.....	.....
.....	.....	.....
.....	.....	.....

3. I HEREBY CERTIFY that I have carefully read the instructions on the reverse side of this form and that the statements made herein are correct to the best of my knowledge and belief.

..... COMPANY,  
By .....  
Address .....

## Instructions.

1. *When required.*—This notice is required whenever an insurance company is liable to make payment on account of policies issued by it on the life of a resident decedent to beneficiaries other than the executor in excess of \$40,000, or whenever there is reason to believe that the aggregate of such insurance issued by it and all other companies exceeds \$40,000. Whenever there is doubt, the notice should be filed.

2. *Time of filing.*—Notice must be filed within sixty days from the date the company receives information of the death of the insured person.

3. *Place of filing.*—This notice must be filed with the Collector of Internal Revenue of the district in which the decedent had his residence at the time of death. For a list of the collection districts, see appendix in Estate Tax Regulations.

4. *What notice should contain.*—The notice should contain all available information in the possession of the company executing the notice as to insurance issued by it or any other company on the life of the decedent. Notwithstanding that notice is required for estates of resident decedents only when the

aggregate insurance payable to beneficiaries other than the executor is in excess of \$40,000, it should contain, when filed, full information about insurance payable to the executor.

5. *Lien.*— Unless the tax is sooner paid in full, it is a lien upon the proceeds of the insurance for ten years.

6. *Penalties.*— The penalty for knowingly making any false statement in this notice is a fine not to exceed \$5,000, or imprisonment, or both. The penalty for failure to file the notice as required is a fine not to exceed \$500, and costs of suit.

7. *Delinquency.*— In the event of failure to file this notice within the sixty days prescribed by the law, a detailed explanation under oath should accompany the notice when filed.

**SIXTY-DAY NOTICE FOR INSURANCE COMPANIES — ESTATE OF  
NONRESIDENT.**

This notice must be filed in duplicate. (Observe instructions on reverse side.)

Name of decedent .....  
Date of death .....  
Place of death .....  
Residence ..... , 19.....

COMMISSIONER OF INTERNAL REVENUE,  
*Estate Tax Division, Treasury Department,*  
*Washington, D. C.*

1. The undersigned insurance company organized in the United States, pursuant to the requirements of section 404 of the Revenue Act of 1918, approved February 24, 1919, hereby gives notice that on the ..... day of ..... , 19...., it received information of the death of the above-named decedent and that the facts in regard to insurance issued by it on the life of such decedent are correctly set forth in the following statement:

Policy No.	Face value.	Amount payable.	To whom payable.	Address.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

(Attach schedule if more space is required.)

2. That the records of this company indicate that the decedent had life insurance in other companies or organizations as follows:

Company.	Address.	Amount of policy.
.....	.....	.....
.....	.....	.....
.....	.....	.....

3. I HEREBY CERTIFY that I have carefully read the instructions on the reverse side of this form and that the statements made herein are correct to the best of my knowledge and belief.

..... COMPANY,  
By .....  
Address .....

**Instructions.**

1. *By whom notice must be filed.*— This notice must be filed by every domestic insurance company that is liable to make payment on account of policies issued by it on the life of a person dying outside the United States,

which includes the States, the Territories of Alaska and Hawaii, and the District of Columbia.

2. *Time of filing.*— Notice must be filed within sixty days from the date the company receives information of the death of the insured person.

3. *Place of filing.*— Notice must be filed with the Commissioner of Internal Revenue, Washington, D. C.

4. *What notice should contain.*— The notice should contain all available information in the possession of the company executing it as to policies of insurance issued by it or any other company or organization on the life of the decedent.

5. *Liability for tax.*— Any person in possession of property which constitutes a part of the estate of a nonresident decedent may be held personally liable for the payment of the estate tax in the event that the property on which the tax is a lien is removed from the jurisdiction of the United States before the tax has been satisfied or provision made for its payment.

6. *Lien.*— Unless the tax is sooner paid in full, it is a lien upon the proceeds of the insurance for ten years.

7. *Penalties.*— The penalty for knowingly making any false statement in this notice is a fine not to exceed \$5,000, or imprisonment, or both. The penalty for failure to file the notice as required is a fine not to exceed \$500, and cost of suit.

8. *Delinquency.*— In the event of failure to file this notice within the sixty days prescribed by the law, a detailed explanation under oath should accompany the notice when filed.

#### CLAIM FOR MILITARY EXEMPTION FROM ESTATE TAX.

To be filed in duplicate. (Read instructions on reverse side before executing this application.)

Collection District .....  
Name of decedent ..... Date of death .....  
Address .....

COMMISSIONER OF INTERNAL REVENUE,  
Washington, D. C.

In the matter of the above estate, I hereby make claim for exemption from estate tax, in accordance with the provisions of section 401 of the Revenue Act of 1918, basing the claim upon the following statement of facts:

##### STATEMENT OF FACTS.

Penalty for false statement in connection with this claim, fine of \$5,000 or imprisonment, or both.

Exact name under which decedent served .....  
Color ..... Date of birth ..... Place of birth .....  
Rank and organization, including company .....  
and regiment or vessel or station .....  
Period served during war against German Government .....  
Date and place of discharge .....  
Nature of injury or disease .....  
When and where received or contracted .....  
Cause of death .....  
Place of death .....  
State whether decedent carried War Risk Insurance,  
and if so, give insurance certificate number .....

I have carefully read the foregoing statement of facts and I do hereby solemnly swear — affirm — that the same is in all respects true to the best of my knowledge, information, and belief.

Signature .....  
Designation .....  
Address .....

Subscribed and sworn to before me, at ..... this .....  
day of ....., 19....

.....  
(Signature of officer administering oath.) (Title.)

### Instructions.

1. *Purpose of claim.*—This claim is required in order that exemption from estate tax provided by section 401 of the Revenue Act of 1918 may be proved in the case of decedents who died while serving in the military or naval forces of the United States in the war against the German Government, or from injuries received or disease contracted while in such service in the war against the German Government, and who left estates otherwise subject to estate tax. The exemption applies to all persons who served in the military or naval forces as defined below during the war against the German Government, without regard to the nature of the duties performed or the place at which stationed during the war.

2. *Definitions.*—The term “military or naval forces of the United States” includes among other units the Marine Corps, the Coast Guard, the Army Nurse Corps (Female), and the Navy Nurse Corps (Female). For the purpose of this exemption the date of the termination of the war against the German Government is the day fixed by the proclamation of the President. The period covered is accordingly from April 6, 1917, to the date fixed by proclamation.

3. *Time of filing.*—This claim may be filed at any time within one year after the date of death, but should be filed as promptly as possible. If it is not possible to file and prove the claim within one year, return on Form 706 must be filed at the expiration of one year from the date of death.

4. *Place of filing.*—The claim should be filed with the Collector of Internal Revenue of the district in which the decedent had his permanent residence at the time of death. If the decedent died having a permanent residence outside the United States, the claim should be filed with the Commissioner of Internal Revenue.

5. *Evidence required.*—The claim should be accompanied by supporting evidence. If death occurred while the decedent was actually in the military or naval forces, the claim should be accompanied by the certificate of The Adjutant General in the case of a soldier, or by the Chief of the Bureau of Navigation in the case of a sailor, or of The Commandant in the case of a marine, evidencing the occurrence of death while in the service. If death occurred after discharge from the service, the evidence indicated below should be submitted:

- (a) Certificate of discharge from the service or copy of such certificate.
- (b) Certified copy of public record of death.
- (c) Affidavit of physician who attended decedent during last illness, setting forth the medical history of the decedent while under his treatment.
- (d) Affidavits or other evidence to show that death resulted from injuries received or disease contracted while serving in the military or naval forces of the United States during the war against the German Government.

6. *Sixty-day notice required.*—The filing of the claim does not relieve the executor from filing sixty-day notice. In cases where the claim can be completed within the sixty-day period, it should be filed with the notice.

7. *Procedure.*—If claim on review is approved, the Commissioner will notify claimant to that effect, and no return need be filed. If the claim is rejected, claimant will be informed and return required.

### APPLICATION FOR RELEASE OF ESTATE TAX LIEN.

(See instructions on reverse side.)

Collection District .....  
Name of decedent ..... Date of death .....  
Residence .....

COMMISSIONER OF INTERNAL REVENUE,  
Treasury Department,  
Washington, D. C.

In accordance with section 409 of the Revenue Act of 1918, application is hereby made for the issuance of a certificate releasing the estate tax lien on the following-described property belonging to or forming a part of the gross estate of the above-named decedent:

Description of property.	Present value.	* Basis of value.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

\* Whether upon personal knowledge, expert appraisal, or sale.

If return on Form 706 has not been filed, state the approximate value of property comprising gross estate.

Real estate ..... \$.....  
Stock and bonds issued in the United States..... \$.....

Request for this certificate is made for the following reasons:

.....  
(Indicate fully why certificate is desired.)

.....  
If property is to be sold or transferred, give the name and address of the purchaser or transferee, and the consideration to be received:

.....  
I do hereby solemnly swear that I have read the foregoing application and that the matters and things therein set forth are true to the best of my knowledge, information, and belief.

Name .....  
Designation .....  
Address .....

Subscribed and sworn to before me this ..... day of ....., 19....

.....  
(Signature of officer administering oath.) (Title.)

### Instructions.

1. *The law.*—"That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate releasing any or all property of such estate from the lien herein imposed." (Section 409, Revenue Act of 1918.)

2. *When certificate will be issued.*—The certificate will be issued in the following cases:

- (a) Where the tax liability has been fully discharged.
- (b) Where the tax liability has not been fully discharged but has been duly provided for.

3. *Necessity for certificate must be shown.*—The issuance of a certificate is a matter resting within the discretion of the Commissioner and not a matter of right to which an estate is entitled. The certificate will be issued only in those cases where actual necessity for such a certificate exists and can be shown. The primary purpose of this certificate is not to evidence payment or satisfaction of the tax, but to permit the transfer of property free from lien

in those cases where it is essential to clear title. In ordinary cases the final receipt issued by the collector will constitute sufficient acquittance.

4. *When the tax liability is fully discharged.*—The tax liability of an estate is fully discharged when there has been an investigation of the return filed by the estate and all tax shown due on the return or by the investigation has been paid. In such case, the certificate, if proper necessity exists, will be issued on the filing of the application without further requirements.

5. *Where the tax liability has not been discharged.*—Where the tax liability has not been discharged the Commissioner will, in his discretion, issue his certificate and may require the filing of a corporate indemnity bond, unless United States Liberty bonds or other bonds of the United States are deposited. Where a bond is required, the collector will notify the executor of the amount, after the application has been filed, and the amount fixed by the Commissioner.

### FORM FOR EXECUTORS' RETURN.

To be Filed in Duplicate.

Collection District .....  
Date Filed .....

Assessment List. Form 23A.	Additional Tax Assessed.	Audit and Claim Record.
.....	Additional Tax, \$...Paid...	Received .....
(Month) (Year)		
.....	Interest.....\$...Paid...	Amount, \$.....
(Page) (Line)		
Gross tax, \$.....	Paid.....	Allowed, \$.....
.....	Page..... Line.....	Rejected, \$.....
Interest, \$.....	Paid..... By..... Date.....	By..... Date.....

### Return for Federal Estate Tax.

An Itemized Inventory by Schedule of the Gross Estate of the Decedent,  
with Legal Deductions.

Decedent's name ..... Date of death ....., 19....  
Residence at time of death .....

### GENERAL INSTRUCTIONS — READ WITH CARE.

1. *Penalties.*—For failure to file return when due, a fine not exceeding \$500, or 25 per cent added to the tax, or both. For knowingly making a false statement in this return, a fine not exceeding \$5,000, or imprisonment, or 50 per cent added to the tax, or any or all of the three.

2. This return is required for the estate of every resident decedent whose gross estate exceeds \$50,000, and for the estate of every nonresident decedent any part of whose gross estate is situated in the United States. The term "United States" used in this form means only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

3. This return is due one year after the date of death, and must be filed with the collector of the district in which the decedent had his permanent residence at the time of death, or, in the case of a nonresident, with the Commissioner of Internal Revenue, Treasury Department, Washington, D. C.

4. Regulations No. 37, Revised, 1919, should be carefully studied before making out this return.

5. All papers used in preparing the return should be carefully preserved for reference or inspection. All estate tax returns are verified by an internal-revenue officer before the tax is determined by the Bureau.



6. If the decedent left a will, a certified copy must be filed in duplicate with the return.

There should be filed in duplicate and as a part of the return such supplemental data and statements as may be necessary to substantiate the return and establish the correct tax.

In the case of the estate of a nonresident, there should be filed in duplicate —

- (1) Certified copy of will, if decedent died testate, or of each will if decedent left more than one, to govern in different jurisdictions.
- (2) If any deductions are claimed, a certified copy of inventory of the complete gross estate, whether situated within or without the United States. Separate schedules should be made for property within and without the United States, respectively.
- (3) If any deduction is claimed for foreign expenditures, a certified copy of schedule of debts and expenses allowed by the foreign court or government.

7. This form consists of cover sheets, general information sheet, and eleven schedules. Care should be taken to see that the return is filed complete and that all schedules are included in the proper order.

The inventory of the gross estate must be set forth upon the schedules provided, and may not be attached in the form of an exhibit.

8. The questions asked under each schedule should be specifically answered, and if the decedent owned no property of any class specified under the schedule, the word "None" should be written across the schedule.

9. If there is not sufficient space for all entries under any schedule, use additional sheets of the same size, numbering them consecutively as follows: Schedule A-1, A-2, etc., and insert them in the proper order in the return.

10. Any property owned jointly or as tenants in the entirety, should be entered under the schedule for the particular kind of property involved, with a statement of the nature and extent of the interest. Jointly owned real estate, for example, should be entered on Schedule A.

11. Property identified as received from an estate within five years, or identified as exchanged for such property, must be entered in Schedule G exclusively and not under any other schedule, whether real estate or other property.

12. Further instructions will be found under each schedule. Returns not in accordance with the instructions upon this form will not be accepted.

ESTATE OF ..... DISTRICT OF .....

### General Information Sheet.

The information called for on this page is necessary for purposes of record and verification. Fill out all blanks carefully.

The name of the decedent's legal heirs and next of kin are required whether the decedent left a will or not. If the will names more than ten beneficiaries, only the names of the ten principal beneficiaries are required.

State whether decedent died testate or intestate. ....  
(Answer.)

Permanent residence at time of death. ....  
Actual place of death ..... Age at death. ....  
Business or employment .....  
Business address .....

### HEIRS AT LAW, LEGATEES, AND BENEFICIARIES.

Name.	Relationship.	Address.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

(If more space is required, insert additional sheets of the same size.)

ESTATE OF ..... DISTRICT OF .....

### Schedule A.

## Real Estate.

### INSTRUCTIONS.

Real estate should be so described that it may be readily located. The legal description is not required unless necessary to show the exact location. The character of the buildings should be stated and the character and area of unimproved land. For location, such details as the following may be necessary:

*City or town property.*—Street and number, ward, map or subdivision, block and lot, etc.

*Rural property.*— County, township, range, block and lot, street, landmarks, etc.

If any item of real estate is subject to mortgage, the unpaid balance of the mortgage should be shown under "Description." The full value of the property and not the equity must be extended in the value column. The mortgage must be deducted under Schedule J of this return.

All rents accrued and unpaid should be apportioned to the date of death whether due at that time or not.

For further instructions see Article 13 et seq., Regulations No. 37, Revised, 1919.

Did the decedent, at the time of death, own any real estate? (Answer "Yes" or "No.") .....

[illegible]

(If more space is needed, insert additional sheets of same size.)

ESTATE OF ..... DISTRICT OF .....

### Schedule B.

### Stocks and Bonds.

### INSTRUCTIONS.

Give a complete and adequate description of all securities, as follows:

STOCKS.—State the number of shares, *exact title of corporation*, common or preferred, par value, and quotation at which returned. If a listed security state principal exchange upon which sold. If unlisted show the address of the issuing company.

**Examples:** 10 shares American Car & Foundry Co., preferred, par \$100,  
at 98, New York Exchange.

10 shares Eagle Manufacturing Co., Red Bank, N. J., common  
par \$25, at 30, unlisted.

**BONDS.**—State quantity and denomination, *exact title*, kind of bond, interest rate and due dates. State the exchange upon which listed or the address of the company, if unlisted.

Example: Ten \$1,000 Baltimore & Ohio Railway Co. first mortgage 4 per cent registered 50-year gold bonds, due 1948, January, April, July, and October, at 96, New York Exchange.

*Listed stocks and bonds* should be returned at the mean between the high and low sale prices on the day of death; if there was no sale on the day of death, the nearest sale price, either before or after death, and within a reasonable period thereof, should be taken.

*Unlisted securities* which are actively dealt in should be appraised upon the basis of last sales prior to death. The source of the quotation should be stated.

*Inactive stock and stock in close corporations* should be appraised upon the basis of net assets of the company at the time of death and its earning capacity during the five preceding years. If such stock forms a material part of the estate there must be submitted copies of statement of assets and liabilities as of the date of death and for each of the five years preceding death, and a statement of net earnings per year for the same period.

*Securities returned as of no value*, nominal value, or obsolete should be listed last, and the address of the company and the State and date of incorporation should be stated, if obtainable from the certificate. Copies of correspondence or statements of reasons for return at no value should be retained for inspection.

Interest on bonds should be apportioned to the death computed upon the basis of 360 days to the year and returned in interest column. Dividends upon stock declared prior to death must be returned separately unless reflected in the price at which the stock is returned.

For further instructions see Article 15 et seq., Regulations No. 37, Revised, 1919.

Did the decedent own any stocks or bonds? (Answer "Yes" or "No.")

Item No.	Description.	Value on day of death.	Interest or dividends.
.....	.....	\$.....	\$.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
	Total.....	\$.....	\$.....
	Grand total .....		\$.....

(If more space is needed, insert additional sheets of same size.)

ESTATE OF ..... DISTRICT OF .....

### Schedule C.

### Mortgages, Notes, Cash, and Insurance.

#### INSTRUCTIONS.

The four classes of property on this schedule should be listed separately in the order given.

*Mortgages.*—State (1) face value and unpaid balance, (2) date of mortgage, (3) name of maker, (4) property mortgaged, (5) interest dates and rate of interest. For example: Bond and mortgage for \$5,000, unpaid balance \$5,000; dated January 1, 1910, John Doe to Richard Roe; premises 22 Clinton St.,

Newark, N. J.; interest payable at 6 per cent per annum January 1 and July 1; interest paid to January 1, 1912.

*Notes, promissory.*—Give similar data.

*Cash in possession.*—List separately from bank deposits.

*Cash in bank.*—Name bank and amount in each bank and give serial number of account. Include accrued interest in income column, or indicate if included in total on deposit.

*Insurance.*—The proceeds of all life insurance to whomsoever payable must be returned regardless of value. Insurance payable to executor must be returned first. State (1) name of company, (2) number of policy, (3) name of person receiving insurance. Include full amount received.

*Important.*—If there is insurance payable to beneficiaries other than the executor, deduction may be taken at bottom of this page equal to the amount returned for such insurance, but not exceeding \$40,000.

For further instructions see Article 34 et seq., Regulations No. 37, Revised, 1919.

1. Did the decedent, at the time of his death, own any mortgages, notes, or cash? (Answer "Yes" or "No.") .....
2. Was any insurance payable on life of decedent to executor? (Answer "Yes" or "No.") .....
3. Was any insurance payable on life of decedent to beneficiaries other than executor? (Answer "Yes" or "No.") .....

Item. No.	Description.	Value on day of death.	Income accrued to date of death.
....	.....	\$.....	\$.....
....	.....	.....	.....
....	.....	.....	.....
....	.....	.....	.....
....	.....	.....	.....
	Less amount of insurance payable to beneficiaries other than the executor not in excess of \$40,000 .....	\$.....	* * * * *
	Total taxable .....	\$.....	\$.....
	Grand total .....		\$.....

(If more space is needed, insert additional sheets of same size.)

ESTATE OF ..... DISTRICT OF .....

### Schedule D.

### Other Miscellaneous Property.

#### INSTRUCTIONS.

Under this schedule include all items of gross estate not returned under another schedule, including the following: Debts due the decedent; interests in business; claims, rights, royalties, and pensions; leases, judgments, choses in action, shares in estates of decedents or trust funds; transfer value of fire and other protective insurance; household goods and personal effects, including wearing apparel; farm products and growing crops; live stock, automobiles, etc.

When an interest in a copartnership or unincorporated business is returned, submit in duplicate statement of assets and liabilities as of date of death and for the five years preceding death, and statement of the net earnings for the same five years. Good will must be accounted for.

In listing automobiles give make, model, and year.

Did the decedent, at the time of his death, own any interest in a copartnership or unincorporated business? (Answer "Yes" or "No.") .....

Did the decedent, at the time of his death, own any miscellaneous property not returnable under any other schedule? (Answer "Yes" or "No.") .....

Item No.	Description.	Value on day of death.	Accrued income.
.....	.....	\$.....	\$.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
	Total.....	\$.....	\$.....
	Grand total .....	.....	\$.....

(If more space is needed, insert additional sheets of same size.)

ESTATE OF ..... DISTRICT OF .....

### Schedule E.

#### Transfers.

#### INSTRUCTIONS.

All gifts and transfers, including trusts, of a material part of the estate, made or executed by the decedent within two years prior to the date of death, other than by a bona fide sale, for a fair consideration in money or money's worth, must be returned under this schedule and the value of the property shown in the first column. The value must also be extended into the second column for inclusion in the gross estate unless the executor has clear evidence to show that the transfers in question were not in fact made in contemplation of death.

All gifts and transfers made in contemplation of death or to take effect at or after death without such consideration, are taxable and must be included in the gross estate regardless of the date of transfer. All transfers of a material part of the decedent's estate made more than two years prior to death must be returned under this schedule, but the value need not be extended into the second column if the executor desires to contend that the transfers were not made in contemplation of death.

In all cases where a transfer or gift is listed under this schedule, but the value not extended into the second column for inclusion in the gross estate, the executor is required to submit as a part of the return documentary evidence in the form of affidavits fully setting forth all the facts and circumstances indicating the intent of the decedent in making the transfer.

Where the transfer was effected by deed of trust, copy of such instrument should be filed in duplicate.

Make full entry, giving name of transferee, date and form of transfer, description of property, and value at time of death.

For further instructions see Article 22 et seq., Regulations No. 37, Revised, 1919.

1. Did the decedent, during the period within two years prior to death, make any transfer of a material portion of his estate in the nature of a final disposition or distribution thereof without a fair consideration in money or money's worth? (Answer "Yes" or "No.") .....
2. Did the decedent, at any time prior to two years before his death, make any transfer or create any trust in contemplation of or intended to take effect at or after death without consideration? (Answer "Yes" or "No.") .....

3. Did the decedent, at any time, make a transfer of a material portion of his estate without consideration, but not believed to be in contemplation of death or intended to take effect at or after death? (Answer "Yes" or No.") .....
4. What trusts, if any, created by the decedent, were in existence at the time of his death? .....

Item No.	Details of transfer.	Value on day of death.	Value to be included in gross estate.
.....	.....	\$.....	\$.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
	Total.....	\$.....	\$.....
	Grand total .....		\$.....

(If more space is needed, insert additional sheets of same size.)

ESTATE OF ..... DISTRICT OF .....

### Schedule F.

### Powers of Appointment.

#### INSTRUCTIONS.

Property passing under a general power of appointment exercised in the decedent's will must be returned. If the decedent exercised a general power by deed, the property must be included in the gross estate if the deed was made in contemplation of death or intended to take effect at or after death, except where executed for a fair consideration in money or money's worth.

Certified copy, in duplicate, of the will or deed conferring the power upon the decedent, and of the instrument by which the power was exercised, must be filed with the return.

Property passing under the exercise of a power of appointment should not be listed under any other schedule.

For further instructions see Article 30 et seq., Regulations No. 37, Revised, 1919.

1. Did the decedent, at any time, by will or otherwise, transfer property by the exercise of a general power of appointment? (Answer "Yes" or "No.") .....
2. Did the decedent, at any time, by will or otherwise, exercise a limited power of appointment? (Answer "Yes" or "No.") .....

Item No.	Description and details.	Value on day of death.	Accrued income.
.....	.....	\$.....	\$.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
	Total.....	\$.....	\$.....
	Grand total .....		\$.....

(If more space is needed, insert additional sheets of same size.)

ESTATE OF ..... DISTRICT OF .....

## Schedule G.

## Property Identified as Taxed Within 5 Years.

(Taxed under Act of October 3, 1917, or Revenue Act of 1918.)

## INSTRUCTIONS.

Before executing this schedule read carefully Articles 50 et seq. and 62, under Regulations No. 37, Revised, 1919.

Property identified as received from an estate taxed within five years, or acquired in exchange for such property, must be included in this schedule and deduction taken under Schedule K. In order to be entitled to this exemption, the first decedent must have died subsequent to October 3, 1917, and the second decedent must have died on or after February 25, 1919. The exemption is limited to the identical property received or property identified as acquired by first exchange of such property. No exemption is permitted for property acquired by a second or subsequent exchange.

If property identified as acquired by first exchange is listed, it must be listed in such manner as to indicate that fact and to show the original property received from the first estate.

If property is acquired by exchange, the full value of the property must be entered in this schedule and carried forward to the recapitulation of the gross estate, even though the present decedent gave additional valuable consideration over and above the value of the property given in the exchange. In such cases there should be deducted in the space provided below the proportion of the present value of the property received in exchange that the additional consideration bore to the entire consideration given. For example: An item of property valued at \$10,000 is exchanged for an item of property valued at \$15,000, \$5,000 additional being given by the decedent. The full value of the property received in exchange should be listed in this schedule, but one-third of the present value should be deducted in the space below before the total is carried forward to Schedule K as a deduction.

Unless property can be clearly identified, the deduction can not be taken. The burden of proof rests upon the person claiming the deduction.

If property of this nature has been received from more than one estate, give separate statements for each estate, repeating the heading given below:

*Estate or Prior Decedent.*

Name of decedent ..... Date of death .....  
 Residence at time of death .....  
 Name and address of administrator or executor .....  
 Return filed with collector at .....

Item No.	Description of property.	Value on day of death.	Accrued income.
.....	.....	\$.....	\$.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
	Total to be included in the gross estate .....	\$.....	\$.....
	Less proportion of present value of property acquired by exchange representing proportion of additional consideration given (see above) .....	.....	.....
	Total to be taken as deduction (see Schedule K) .....	\$.....	\$.....

(If more space is needed, insert additional sheets of same size.)

ESTATE OF ..... DISTRICT OF .....

## Schedule H.

## Funeral Expenses and Administration Expenses.

## INSTRUCTIONS.

Funeral expenses and miscellaneous administration expenses should be itemized. Give name of creditor and exact nature of expense. Preserve all vouchers and receipts for inspection.

No deduction may be taken upon the basis of a vague or uncertain estimate, but a close estimate is deductible. Where the amount is estimated, indicate that fact.

Executors' or administrators' commissions may be estimated, provided that the commissions will be awarded by the court of probate jurisdiction or allowed in a probate account and will be paid.

Attorneys' fees should be entered in the exact amount paid or to be paid. In the absence of an award by the court, this item is not deductible in these States where the fee is a charge against the executor and not against the estate.

Estate, legacy, succession, and inheritance taxes, and taxes on income accrued after death, are not deductible.

For further instructions see Articles 37 et seq. and 59 et seq., Regulations No. 37, Revised, 1919.

Item No.		Amount of item.	Totals.
.....	Funeral expenses .....	\$.....	\$.....
.....	.....	.....	.....
.....	.....	.....	.....
	Total funeral expenses .....	.....	\$.....
	Executor's commission .....	.....	\$.....
	Attorney's fee .....	.....	\$.....
	Miscellaneous administration expenses...	.....	\$.....
	Total miscellaneous expenses.....	.....	\$.....
	Total.....	.....	\$.....

(If more space is needed, insert additional sheets of same size.)

ESTATE OF ..... DISTRICT OF .....

## Schedule I.

## Debts of Decedent.

## INSTRUCTIONS.

Itemize fully below all valid debts of the decedent due and owing at the time of death. Preserve all vouchers for inspection.

If deduction is claimed for a debt, the amount of which is disputed or the subject of litigation, only such amount may be deducted as the estate concedes to be a valid claim. The fact of litigation should be stated. If any debt has been canceled by the creditor, no deduction may be taken.

Enter notes unsecured by mortgage under this heading and give full details, including the name of payee, face and unpaid balance, date and term of note, interest rates and date to which interest was paid prior to death.

Care must be taken to state the exact nature of the claim as well as the name of the creditor. If the claim is for services rendered over a period of time,



state the period covered by the claim. Example: January 1, 1919, Edison Electric Illuminating Company, for electric service during December, 1918, \$25.

Item No.	Date of claim.	Creditor and nature of claim.	Amount.
.....	.....	.....	\$.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
Total .....			\$.....

(If more space is needed, insert additional sheets of same size.)

ESTATE OF ..... DISTRICT OF .....

### Schedule J.

### Mortgages, Net Losses, and Support of Dependents.

#### INSTRUCTIONS.

**Mortgages.**—Give location of property, name of mortgagee, date and term of mortgage, amount and unpaid balance, rate of interest, date to which interest was paid prior to death. Enter in second column accrued interest apportioned to date of death. Unsecured notes should be listed under Schedule I.

**Losses.**—Losses are strictly limited to net losses arising from fire, storm, shipwreck, or other casualty, or from theft to the extent that such losses are not compensated for by insurance. Losses must occur during the settlement of the estate. Depreciation in the value of securities does not constitute a deductible loss. In listing losses, specify nature. If insurance was received on account of loss, state the amount collected.

**Support of dependents.**—No deduction may be taken under this item unless the local law permits the allowance, the local court has made a decree specifying the amount thereof, and in fact the allowance was reasonably required for the support of the person in question. In listing this item, give the names of the dependents and their relationship.

For further instructions see Article 47 et seq. and 61, Regulations No. 37, Revised, 1919.

Item No.	Mortgages.	Amount.	Accrued interest.
.....	.....	\$.....	\$.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
Total .....		\$.....	\$.....
Grand total .....		.....	\$.....

(If more space is needed, insert additional sheets of same size.)

Item No.	Net losses during administration.	Amount.
.....	.....	\$.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
Total .....		\$.....

(If more space is needed, insert additional sheets of same size.)

Item No.	Support of dependents.	Amount.
.....	.....	\$.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
Total .....		\$.....
(If more space is needed, insert additional sheets of same size.)		

ESTATE OF ..... DISTRICT OF .....

Schedule K.

Property Identified as Taxed Within Five Years.

INSTRUCTIONS.

Enter in this schedule, by separate estates if more than one estate is involved, the total amount deductible as representing property received from an estate taxed within five years or acquired by exchange for property so received, as set forth in Schedule G.

*Important.*—Care must be observed to enter in this schedule only the present value of the property actually received, or if such property has been exchanged for other property, the present value of such other property. Where the exchange was equal, the full present value should be entered. Where the decedent in acquiring such other property gave additional consideration, there should be deducted such proportion of the present value of the property acquired in exchange as the value of the original property bore to the entire consideration given.

For further instructions see Article 50 et seq. and 62, Regulations No. 37, Revised, 1919.

Item No.	Name of prior decedent.	Address.	Date of death.	Amount.
.....	.....	.....	.....	\$.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Total .....				\$.....
(If more space is needed, insert additional sheets of same size.)				

Charitable, Public, and Similar Gifts and Bequests.

When a deduction is claimed under this schedule, there must be submitted (1) certified copy of will or instrument of gift, (2) receipt or statement showing payment or acceptance, (3) affidavit of executor, showing whether will has been or will be contested, (4) such other document or evidence as may be specified by the Bureau.

For further instructions see Article 53 et seq. and 63, Regulations No. 37, Revised, 1919.

Item No.	Name and address of beneficiary.	Character of institution.	Amount.
.....	.....	\$.....	\$.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
Total .....			\$.....
(If more space is needed, insert additional sheets of same size.)			

## Recapitulation, Rates of Tax and Tax Due, and Jurat.

Sched- ule.	Gross estate.	Value.
A	Real estate .....	\$.....
B	Stocks and bonds .....	.....
C	Mortgages, notes, cash, and insurance .....	.....
D	Other miscellaneous property .....	.....
E	Transfers .....	.....
F	Powers of appointment .....	.....
G	Property identified as taxed within five years. ....	.....
	Total gross estate .....	\$.....

Sched- ule.	Amount.
H	Funeral expenses .....
	Administration expenses:
	Executor's fee .....
	Attorney's fee .....
	Miscellaneous .....
I	Debts of decedent .....
J	Unpaid mortgages .....
	Net losses during settlement .....
	Support of dependents .....
K	Property identified as taxed within five years. ....
	Charitable, public, and similar bequests .....
	Specific exemption (resident decedents only) .....
	Total deductions .....
	Total gross estate .....
	Total deductions .....
	Net estate for tax .....

## Estate of Nonresident.

If the decedent was not a resident of the United States, Hawaii, or Alaska, the total value of the gross estate, wherever situated, must be shown here.

1. Gross estate in United States as shown above .....	\$.....	.....
2. Gross estate outside United States .....	.....	.....
Total wherever situated .....	\$.....	.....
3. Total legal deductions .....	.....	.....
Total net estate wherever situated .....	\$.....	.....
4. Portion of gross estate in United States:		
5. Deductions—Proportions of Sched- ules H, I, and J (not to exceed 10% of Item 4) .....	\$.....	.....
Schedule K .....	.....	.....
6. Net estate for tax .....	\$.....	.....

## Rates and Tax Due.

		Date of death.....				(Date.)		
		(1)	(2)	(3)			(4)	
		Sept. 9, 1916, to Mar. 2, 1917,	Mar. 3, 1917, to Oct. 3, 1917,	Oct. 4, 1917, to Feb. 24, 1919,	On and after 1919.			
Net estate.		inclusive.	inclusive.	inclusive.				
Exceed- ing—	Not ex- ceeding—	Amount of block.	Rate per cent.	Rate per cent.	Rate per cent.	Rate per cent.	Amount of tax.	
	\$50,000	\$50,000	1	1½	2	1	\$.....	
\$50,000	150,000	100,000	2	3	4	2	.....	
150,000	250,000	100,000	3	4½	6	3	.....	
250,000	450,000	200,000	4	6	8	4	.....	
450,000	750,000	300,000	5	7¼	10	6	.....	
750,000	1,000,000	250,000	5	7½	10	8	.....	
1,000,000	1,500,000	500,000	6	9	12	10	.....	
1,500,000	2,000,000	500,000	6	9	12	12	.....	
2,000,000	3,000,000	1,000,000	7	10	14	14	.....	
3,000,000	4,000,000	1,000,000	8	12	16	16	.....	
4,000,000	5,000,000	1,000,000	9	13½	18	18	.....	
5,000,000	6,000,000	1,000,000	10	15	20	20	.....	
6,000,000	7,000,000	1,000,000	10	15	20	20	.....	
7,000,000	8,000,000	1,000,000	10	15	20	20	.....	
8,000,000	9,000,000	1,000,000	10	15	22	22	.....	
9,000,000	10,000,000	1,000,000	10	15	22	22	.....	
10,000,000	.....	.....	10	15	25	25	.....	
Total tax .....								\$.....

## Jurat for Executors and Administrators.

We—I .....  
the undersigned execut.....administrat....., do hereby solemnly  
swear—affirm that on the ..... day of ....., 19...., the .....  
..... court at ..... granted letters testamentary or  
of administration upon the estate of the foregoing named decedent to .....  
.....; that ..... have made diligent search for property  
of every kind left by the decedent; that ..... have carefully read the  
instructions printed on this form; that hereon is listed all of the property,  
tangible and intangible, forming the gross estate of the decedent so far as it  
has come to ..... knowledge and information; that ..... have no  
knowledge of any transfers made or trusts created in contemplation of death  
or to take effect at or after death, except as stated on Schedule E; that to the  
best of ..... knowledge, information, and belief the value shown for each  
item of property listed hereon was the actual and full value of the same at the  
time of decedent's death; and that the debts, expenses, and charges entered  
hereon as deductions from the gross estate are correct and legally allowable.

## Jurat for Beneficiaries, Custodians, and Trustees.

I—We .....  
the undersigned beneficiar.....Custodian—Trustee, do hereby solemnly  
swear—affirm that ..... have carefully read the instructions printed on this  
form; that hereon is listed all of the property, tangible or intangible, contained  
in the gross estate of the decedent which has come into ..... possession and  
control; that to the best of ..... knowledge, information, and belief, the  
value shown for each item of property listed hereon was the actual and full

value of the same at the time of the decedent's death; and that the debts, expenses, and charges entered hereon as deductions from the gross estate are correct and legally allowable.

(Name) .....

(Address) .....

(Name) .....

(Address) .....

(Name) .....

(Address) .....

Subscribed and sworn to before me, at.....  
this ..... day of ....., 19....

.....

*Notary Public—Deputy Collector.*

NOTE.—If there is more than one executor or administrator all must sign and swear to the return.

Attorney's name and address .....

## C.—THE NEW YORK STATUTE.

### 1. History and Development.

The State of New York collects from a half to a third of all the inheritance taxes and at least one-half of all the litigations arising from the imposition of those taxes have been decided by her courts. Her various statutes with all their experiments and changes of policy have been copied along with the construction placed upon them by her courts by nearly every State in the Union.

#### a. FREQUENT CHANGES.

In the course of the last forty years the New York statute has been altered or amended no less than ninety-one times. She has taxed all the personal property of collaterals and strangers and exempted direct heirs. She has added real estate and taxed transfers to near relations. She has taxed all personal property within the State of nonresidents and has exempted such property except in the case of tangibles. She began drifting away from that policy before the other States could follow her, and by the statute of May 14, 1919 has finally abolished

the distinction. She has experimented with all sorts of graded rates and exemptions and radically changed them again in 1916. The original statutes were poorly drafted and ingenious attorneys found many loopholes for avoiding the tax on behalf of their clients. As fast as these flaws were pointed out by the courts there has been a constant effort to patch the statute and stop the leaks. In spite of all this the present act is fairly consistent and intelligible and the practice under it well established and defined. Most of its essential details have been preserved and perfected throughout the legislation and litigation of nearly half a century.

#### b. LIST OF THE STATUTES.

Following is a full list of all the inheritance tax statutes passed by the New York Legislature since the first tax was imposed in 1885:

Year	Chapter
1885.....	483.
1887.....	713.
1889.....	307-479.
1890.....	553.
1891.....	34-215.
1892.....	167, 168, 169, 399, 443.
1893.....	199-704.
1894.....	767.
1895.....	191, 378, 515, 556, 861.
1896.....	160, 908, 952, 953.
1897.....	284, 375.
1898.....	88, 289.
1899.....	76, 269, 270, 389, 406, 672, 737.
1900.....	379, 382, 658, 723.
1901.....	173, 288, 458, 493, 609.

Year	Chapter
1902.....	101, 283, 496.
1903.....	41.
1904.....	758, 62.
1905.....	368.
1906.....	111, 567, 699.
1907.....	204, 323, 709.
1908.....	310, 312, 321.
1909.....	62, 596.
1910.....	70, 600, 706.
1911.....	308, 732, 800, 803.
1912.....	206, 214.
1913.....	356, 366, 639, 795.
1915.....	383, 664.
1916.....	80, 323, 548, 549, 550, 551, 562, 582.
1917.....	53, 128, 194, 481, 482, 700.
1918.....	111, 183, 631.
1919.....	444, 626.

Most of these are merely amendments and many of them are trivial but six times has the Legislature enacted an entire statute.

These statutes are:

- Laws 1885, Chapter 483. In Effect June 30.
- Laws 1887, Chapter 713. In Effect June 25.
- Laws 1892, Chapter 399. In Effect May 1.
- Laws 1896, Chapter 908. In Effect June 15.
- Laws 1905, Chapter 368. In Effect June 1.
- Laws 1909, Chapter 62, Article 10. In Effect Feb. 17.

The last statute is the present law which has been amended, as indicated, thirty odd times.

#### C. THE FIRST STATUTES TAXING ONLY COLATTERALS.

The first inheritance tax in the State of New York was imposed by Chapter 493, L. 1885, which became a law

June 10 of that year, was upon the entire estate of the decedent if valued at more than \$500, and included all property of nonresidents within the State. It exempted from any tax the father, mother, husband, wife, children, brother, sister, lawful lineal descendants, son-in-law, daughter-in-law and all corporations or institutions exempted by law from general taxation. Upon all others it imposed the flat rate of 5%. It took effect twenty days after its passage.

*Matter of Howe*, 112 N. Y. 100.

It taxed transfers by will and intestate laws and transfers by “deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor.”

The only material changes made by the second statute, Laws of 1887, Chapter 713, was to add an adopted or mutually acknowledged child to the exempt class and make provision for the computation of the value of life estates and remainders by the Superintendent of Insurance on the 5% basis.

#### d. THE ACT OF 1892, TAXING DIRECT INHERITANCES.

Chapter 399, L. 1892, took effect May 1, 1892.

*Matter of Milne*, 76 Hun, 328.

By the first section the description of transfers in avoidance of the tax was strengthened and made to read: “by deed, grant, bargain, sale or gift made *in contemplation of the death* of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death.”

The tax was also made retroactive as to any such transfers by providing “such tax shall also be imposed when any such person or corporation becomes beneficially entitled in possession or expectancy to any property or



the income thereof by any such transfer *whether made before or after the passage of this act.*

A tax of 1% on all estates in personal property valued at more than \$10,000 was imposed when the beneficial interest passed to the persons exempted by the former statutes excepting bishops and religious corporations. The tax at 5% when the property passed to others remained unchanged.

When the aggregate amount transferred or passing to both classes of taxable persons was over \$500, but less than \$10,000, the portion passing to the 5% class was taxable.

*Matter of Rosendahl*, 40 Misc. 542; 82 Supp. 992.

*Matter of Garland*, 88 App. Div. 380; 84 Supp. 630.

*Matter of Mock*, 113 App. Div. 913; 49 Misc. 283.

*Matter of Corbett*, 171 N. Y. 516; 64 N. E. 209.

A section of definitions was added in which it was provided: "The words 'estate' and 'property' as used in this act shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor passing or transferred to those not specifically exempted by the provisions of this act and not as the property or interest therein passing or transferred to individual legatees, etc."

This provision made it clear that the tax was imposed as an excise on the right to *transfer* and not as an impost upon the right to *receive*.

*Matter of Hoffman*, 143 N. Y. 327; 38 N. E. 311.

#### e. THE ACT OF 1896 — POWERS OF APPOINTMENT.

In 1896 the act of 1892 was incorporated as Article 10 of the Tax Law by Ch. 908, L. 1896 in effect June 15 of that year; but no material change was made, excepting that banks and safe deposit companies holding securities of a decedent were for the first time required to notify the

Comptroller before delivering them. The following year, however, by Ch. 284, L. 1897, a provision was added which has been the subject of much litigation.

It was found that valuable estates were passing under powers of appointment created in wills of decedents who had died before the inheritance tax laws were enacted. The courts were inclined to the view, and the Court of Appeals subsequently decided, that the exercise of such power was not taxable under the statute. (*Matter of Harbeck*, 161 N. Y. 211; 55 N. E. 850.)

The amendment of 1897 added the following as a fifth subdivision to section 220:

“Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, the whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.”

In 1899 by Chapter 76 Section 230 was amended to this effect: “All estates upon remainder or reversion which vested prior to June 30, 1885 but which will not come into actual possession or enjoyment until after the passage of

this act shall be assessed, when those beneficially entitled enter into possession.”

This amendment and the provisions taxing successions even though there was a failure to exercise the power of appointment were held unconstitutional.

*Matter of Pell*, 171 N. Y. 48; 63 N. E. 789.

*Matter of Lansing*, 182 N. Y. 238; 74 N. E. 882.

These cases proved a stumbling block in the development of the Transfer Tax Law in New York. The latter provision was copied by Massachusetts and several other States and has there been upheld.

*Minot v. Treasurer*, 207 Mass. 588; 93 N. E. 973.

*Burnham v. Treasurer*, 212 Mass. 165; 98 N. E. 603.

The tax upon the succession under the exercise of a power when the creator of the power died before the statute was sustained.

*Matter of Dows*, 167 N. Y. 227; 60 N. E. 439; aff. *Orr. v. Gilman*, 183 U. S. 278; 22 S. Ct. Rep. 213.

It is where there is a failure to exercise that the New York rule diverges.

#### f. AMENDMENT OF 1899 — HIGHEST RATE.

Chapter 76, Laws of 1899 amended the rules as to the taxation of contingent remainders which amendment still obtains in this State and has been followed in several others. It has been fruitful of litigation and though it has stood for nearly twenty years it was again before the Court of Appeals for construction in 1917.

*Matter of Hutton*, 176 App. Div. 217; 160 Supp. 223; aff. 220 N. Y.

As it is incorporated into the present statute substantially unchanged it requires no further comment here, the topic being fully considered under Contingent Remainders.

g. ACT OF 1905 — REAL ESTATE ADDED.

The transfer of real estate was first taxed by Ch. 41, L. 1903. The re-enactment of 1905, Chapter 368, included real estate in the property passing to direct heirs and near relatives subject to the tax of 1% when the estate exceeded \$10,000 and extended the exemptions to practically all religious, charitable or benevolent corporations, including societies for the prevention of cruelty to animals, and these provisions are substantially incorporated in the present statute.

Under section 227 the Comptroller or his representative was authorized to examine the securities of a decedent in the possession of a bank or trust company. This provision is retained in the present law and has been widely copied by other States.

Laws of 1908, Chapter 310, added the following, which is retained in the present statute, as to tangible property of nonresidents.

“Whenever the property of a resident decedent, or the property of a nonresident decedent within the State, transferred by will, is not specifically bequeathed or devised, such property shall, for all the purposes of this act, be deemed to be transferred proportionately to, and divided *pro rata* among all the general legatees and devisees named in said decedent’s will, including all transfers under a residuary clause of such will.”

## 2. The Present Law and its Amendments.

a. THE ORIGINAL STATUTE OF 1909.

Nominally the present inheritance tax law of the State of New York is Chapter 62 of the Laws of 1909, being Article X of the Tax Law. But it has several times been radically changed by amendment though chiefly as to the theory of the tax and the graded rates and exemptions.

The statute was a substantial re-enactment of the act of 1905 and a codification of its numerous amendments.

b. THE "REIGN OF TERROR ACT" OF 1910.

The amendment of 1910, Chapter 706, is popularly known among estate attorneys as the "reign of terror" statute on account of the high rate of taxation it imposed. It became a law July 11, 1910, and remained in force until it was repealed and replaced by the act of 1911, Chapter 732, which took effect July 21, 1911.

It imposed the rates and prescribed the exemptions shown by the following table:

1910

TABLE OF RATES AND EXEMPTIONS UNDER CHAPTER 706,  
L. 1910.

*In Effect From July 11, 1910 to July 21 1911.*

CLASS OR RELATIONSHIP	Exemption	Above Exemption Where Allowed				
		Up to 25,000	25,000 to 125,000	125,000 to 625,000	625,000 to 1,625,000	In excess of 1,625,000
Father, mother, widow, minor child . . . . .	\$5,000	per cent 1	per cent 2	per cent 3	per cent 4	per cent 5
Husband, adult child, brother, sister, daughter - in - law, adopted or mutually acknowledged child, lineal descendants.	Not taxed if less than \$500.	1	2	3	4	5
All others, except exempt, charitable, etc., corporations.	Not taxed if less than \$100.	5	10	15	20	25

Note.— In re Jourdan, 206 N. Y. 653, reversing 151 App. Div. 8. (Construction of Sec. 221, Laws of 1910, chap. 706.)

Section 221, Chapter 706, L. 1910, fixing the above rates was construed in the following cases:

*Matter of Jourdan*, 151 App. Div. 8; 135 Supp. 878; reversed on dissenting opinion, 206 N. Y. 653.

*Matter of Schwarz*, 156 App. Div. 931; 141 Supp. 349; aff. 209 N. Y. (mem.).

*Matter of Eaton*, 79 Misc. 69; 140 Supp. 601.

*Matter of Kip*, N. Y. L. J., March 28, 1912.

These authorities overrule

*Matter of Elletson*, 75 Misc. 582; 136 Supp. 455.

It will be noticed that these rates, while they created a panic among large property owners in New York are identical with those now imposed by several of the western States. As to direct heirs it was not as severe as the present statute.

c. A RADICAL CHANGE IN THEORY AS TO TRANSFER TAXED.

Heretofore all estates above \$10,000 had been subject to tax on the *entire amount*. Under the act of 1910 an exemption was made to *each beneficiary* and the theory of the tax was also changed. Instead of being imposed upon the right to *transfer* it was imposed on the *right to receive*.

This change was accomplished by the amendment of the definition section, 243:

§ 243. **Definitions.** The words "estate" and "property," as used in this article, shall be taken to mean the property or interest therein passing or transferred to individual or corporate legatees, devisees, heirs, next of kin, grantees, donees or vendees, and not the property or interest therein of the decedent, grantor, donor, or vendor passing or transferred, and shall include all property or interest therein, whether situated within or without this State. The word "transfer," as used in this article, shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed. The words "County Treasurer" and District Attorney," as used in this article, shall be taken to mean the Treasurer or the District Attorney of the County of the Surrogate having jurisdiction as provided in section two hundred and twenty-eight of this article.

#### d. THE AMENDMENTS OF 1911. TANGIBLES AND INTANGIBLES.

Another radical change was made by the amendment of 1911, Chapter 732. It reduced the graded rates, preserved the altered theory of the tax and the exemptions to each beneficiary but it exempted all but the "tangible" property of nonresident decedents. As has been pointed out this statute resulted ultimately in the falling off of receipts from \$13,000,000 to \$7,000,000.

The statute eliminated the provision taxing the succession upon the failure to exercise a power of appointment in the estate of the donee of the power. This leaves property subject to a power which is not disposed of in either will to pass intestacy and has left open a question which has been fruitful of litigation.

The rates and exemptions prescribed by the 1911 amendments were as follows:

TABLE OF RATES AND EXEMPTIONS AS ESTABLISHED BY  
CHAPTER 732, L. 1911.

*In Force From July 21, 1911 to May 15, 1916.*

CLASS OR RELATIONSHIP	Exemption	Above Exemption			
		Up to 50,000	50,000 to 300,000	300,000 to 1,300,000	All in excess of 1,300,000
		per cent	per cent	per cent	per cent
Father, mother, husband, wife, child, brother, sister, daughter-in-law, son-in-law, adopted child or mutu- ally acknowledged child, lineal descendants . . . . .	\$5,000	1	2	3	4
All others, excepting charitable, etc., corporations . . . . .	1,000	5	6	7	8

This amendment was not retroactive.

*Matter of Holt*, N. Y. L. J., March 16, 1912.

*Matter of Niles*, N. Y. L. J., January 5, 1912.

#### e. TAX EXTENDED TO CURTESY.

The courts having held that a husband's right of curtesy and his right to succeed to the personalty of his

intestate wife were exempt this provision was added to the definitions of Section 243:

“The words ‘the intestate laws of this State,’ as used in this article, shall be taken to refer to all transfers of property, or any beneficial interest therein, effected by the statute of descent and distribution and the transfer of any property, or any beneficial interest therein, effected by operation of law upon the death of a person omitting to make a valid disposition thereof, including a husband’s right as tenant by the curtesy or the right of a husband to succeed to the personal property of his wife who dies intestate leaving no descendants her surviving.”

**f. MAXIMUM AND MINIMUM.**

By Chapter 800, Laws of 1911 a well-intentioned provision was added to Section 241, which has proved of great difficulty in practical application. It relates to the taxation of contingent remainders at the highest rate and is still in the law. It provides that the difference between the “highest possible rate” and the minimum rate to which a contingent remainder may ultimately be subject shall be deposited by the State, the interest paid to the executors or trustee, and the principal sum returned in case the highest rate is not ultimately due; or securities may be deposited in lieu of cash.

**3. The Problem as to the Property of Non-Residents.**

**a. PREVIOUS POLICY OF THE STATE.**

From 1885 until 1911 the State of New York had taxed all personal property of nonresidents within the State. Until 1912 Massachusetts did the same. The problems arising under such taxation were solved by the courts of these two States and gradually a body of law was evolved through years of litigation. These statutes were widely



copied by the western States where the decisions construing them are authoritative.

But as the western States began to impose high rates upon nonresident inheritances, it was found that the logical result was to impose double taxation. To avoid double taxation New York adopted the plan evolved by the Pennsylvania courts of declaring that "tangible" assets such as goods, wares and merchandise had a situs, while intangibles, such as stocks and bonds, evidences of debt and money on deposit in banks, followed the domicile of the owner. It was expected that the other States would all fall in line. Massachusetts taxed only real estate of nonresidents and exempted her own residents from taxation on property out of the State which was taxed elsewhere by amendments adopted in 1912.

The plan offered by New York has been rejected by three-fourths of the States for the simple reason that being newer in development much of their most valuable property is owned by nonresidents, and the New York act of May 14, 1919 has abolished the distinction.

#### b. REAL ESTATE OF CORPORATIONS.

On the other hand it was soon found that the experimental distinction between tangible and intangible property of nonresidents was full of loopholes which ingenious attorneys for estates were not slow to discover. Nonresidents with large real estate holdings in New York began forming corporations to hold the real estate. The stock and bonds of such a corporation obviously were intangible. On the other hand to declare all stocks and bonds in New York corporations "tangible" as is done in New Jersey and Oklahoma was practically to abolish the distinction.

In *Matter of Richards*, 182 App. Div. 572; aff. 226 N. Y. mem. it was held that bonds of corporations secured by

mortgages upon specific real property within the State were not taxable in the estate of a nonresident, distinguishing between corporation bonds and ordinary mortgage bonds of a corporation which merely secured a debt of that corporation.

### c. CO-PARTNERSHIP ASSETS.

It also became apparent that the large proportion of the tangible assets owned by nonresidents within the State consisted of goods, wares and merchandise of co-partnerships. Co-partnerships also owned real estate and as the interest of co-partners is only in the surplus after an accounting when all debts have been paid that interest is "intangible."

*Matter of Albert D. Smith*, N. Y. L. J., March 4, 1914.

*Matter of Ludeke*, N. Y. L. J., January 30, 1914.

Here was a second loophole and the statute of 1911 obviously required patching. This was the patch—being an amendment to section 220 by Chapter 664, L. 1915.

"When the transfer is by will or intestate law, of tangible property within the State or of any intangible property, if evidenced by or consisting of shares of stock, bonds, notes or other evidences of interest in any corporation, joint stock company or association wherever incorporated or organized, except a corporation, foreign or domestic, or joint stock company or association constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation or a public service or manufacturing corporation as defined and classified by the laws of this State, and the property represented by such shares of stock, bonds, notes or other evidences of interest consists of real property which is located, wholly or partly, within the State of New York, or of an interest in any partnership business conducted, wholly or partly, within

the State of New York, in such proportion as the value of the real property of such corporation, joint stock company or association, or as the value of the entire property of such partnership located in the State of New York bears to the value of the entire property of such corporation, joint stock company or association or partnership, and the decedent was a nonresident of the State at the time of his death.”

d. CAPITAL INVESTED IN BUSINESS.

Still another effort was made by Chapter 323, L. 1916, to prevent the escape of tangible personal property of non-residents which ought to pay a tax and yet preserve the new policy of the State against taxation of securities and money on deposit in banks and trust companies by non-residents and the following was added to sub. 2, Sec. 220.

“Or when the transfer is by will or intestate law of capital invested in business in the State by a nonresident of the State doing business in the State either as principal or partner.”

The construction of this amendment has involved considerable litigation. In *Matter of Hettie R. Green*, 184 App. Div. 376; 171 Supp. 494; it was held that the lending of money may constitute doing business within the State.

The estate had escaped the payment of taxes as a resident establishing the domicile of decedent in Vermont. It was explained that her constant dwelling in New York was merely for business reasons. The State Comptroller then undertook to tax her New York assets as capital invested in business. In reversing the Surrogate's order in this proceeding the court said:

“It seems quite clear that this method of doing business constituted either investments by Mrs. Green in the Westminster Company or loans of money by her to that company. It is unnecessary to determine upon this appeal

whether continuous investment and reinvestment as one's sole occupation and for the purpose of making money constitutes doing business, for it is quite evident, and it is not disputed, that engaging regularly, and so frequently and habitually as to constitute a course of dealing, in the practice of loaning money, would constitute doing business. The evidence taken before the appraiser is insufficient to determine whether Mrs. Green was merely making investments of surplus income from time to time, and, if so, whether this was done in such a manner, in such volume, and so regularly and frequently as to present the question whether the course of dealing constituted doing business, or, on the other hand, whether she was engaged in the business of money lending. That is the reason why the Comptroller wished to develop the facts in greater detail. The propriety and necessity of a thorough inquisition to disclose the true state of facts are readily apparent, for there appears to be no doubt that the same method was followed after the enactment of the amendment and up to the time of Mrs. Green's death that was followed for some years prior thereto. Some of the inquiries of counsel for the Comptroller which were excluded by the learned Surrogate were not entirely appropriate to develop the facts necessary to enable the court to determine whether the decedent was doing business within the meaning of the statute, but others were directed to this end, and there was a substantial refusal to permit a thorough disclosure of the facts. Such an inquisition should not be made oppressive or vexatious, but, being prosecuted in good faith, should be sanctioned in so far as it tends to develop relevant facts. This amendment of the statute may result in an enormous gain for the State in taxable property, and save for the State great sums in taxes which have hitherto been lost by the practice of persons who, having great fortunes invested as capital in this State, escape their just share of taxation for

the protection that the State affords their capital by maintaining a domicile in some other State. Respecting the inquisition which the law authorizes the Comptroller to make, in order to determine whether the estate of a decedent is subject to taxation, the policy of the court should be one of encouragement, and not of repression.

“The order appealed from should be reversed, and the taxing order modified, by directing that the report be remitted to an appraiser for the purpose of ascertaining the amount of capital invested by the decedent in the State, and whether the decedent was doing business in the State, with costs to appellant.”

A seat in the Stock Exchange owned by a nonresident decedent is not capital invested in business within the State under the statute.

*Matter of Ogden*, 170 Supp. 630.

In *Matter of Tollman* the deceased nonresident had on deposit within the State a personal investment account and a chattel mortgage account. It was held that the funds in the personal investment account were not subject to the transfer tax but that the funds in the chattel mortgage account were taxable.

*Matter of Tollman*, 104 Misc. 696; 172 Supp. 294.

In *Matter of Voorhees*, 165 Supp. 527, Surrogate Fowler, of New York County thus construed the section:

“This is an appeal by the executor from the order assessing a tax upon the decedent’s estate. The decedent, who was a resident of South Carolina, died on the 23d of June, 1916. He conducted a commission business in this city, and under the amendment effected by chapter 323 of the Laws of 1916 the capital invested in such business is subject to a tax. The controversy between the executor and the State Comptroller relates to the value or amount of such capital. The appraiser found that it was

\$73,758.59, and this amount included \$49,138.91 on deposit in the Fidelity Trust Company in this city. Besides conducting a commission business in this city, the decedent was engaged in farming in South Carolina. Each business was conducted separately. He shipped the farm produce to his place of business in this city, and it was disposed of in the same manner as consignments of goods made by other farmers. At the time of his death the business conducted by him as commission merchant in this city owed the business conducted by him as a farmer in South Carolina the sum of \$42,000 for farm produce sold and not accounted for. This sum did not constitute capital invested by the decedent in business in this State, and should be deducted from the amount on deposit with the Fidelity Trust Company in ascertaining the value of the taxable assets in this State. It is the fact, not appearances, which control taxability. The order fixing tax will be reversed and the appraiser's report remitted to him for the purpose of making the deduction indicated. Settle order on notice."

e. ATTEMPT TO DEFINE A "RESIDENT."

The widest loophole in the act of 1911 and that through which millions of property escaped and is escaping taxation is found in the facility with which wealthy people whose business is in New York can maintain a domicile in Vermont where only collateral inheritances were taxed or in Rhode Island which did not tax them at all until 1916 or abroad where the flag protects them from heavy foreign taxation while they do not contribute to the maintenance of its glory from their investments at home. Many such people live in New York hotels throughout the winter but claim domicile at country homes.

To meet this situation — or attempt to meet it, the fol-

lowing amendment to the definition section, 243, was added by L. 1916, chapter 551:

“ For any and all purposes of this article and for the just imposition of the transfer tax, every person shall be deemed to have died a resident, and not a nonresident, of the State of New York, if and when such person shall have dwelt or shall have lodged in this State during and for the greater part of any period of twelve consecutive months in the twenty-four months next preceeding his or her death; and also if and when by formal written instrument executed within one year prior to his or her death or by last will he or she shall have declared himself or herself to be a resident or a citizen of this State, notwithstanding that from time to time during such twenty-four months such person may have sojourned outside of this State and whether or not such person may or may not have voted or have been entitled to vote or have been assessed for taxes in this State; and also if and when such person shall have been a citizen of New York sojourning outside of this State. The burden of proof in a transfer tax proceeding shall be upon those claiming exemption by reason of the alleged nonresidence of the deceased. The wife of any person who would be deemed a resident under this section shall also be deemed a resident and her estate subject to the payment of a transfer tax as herein provided, unless said wife has a domicile separate from him.”

The provisions of this section received a rather strict construction in *Matter of Hettie R. Green*, 99 Misc. 582; aff. 179 App. Div. 890, but the question did not go to the Court of Appeals as no final order was involved. Its force and effect were, however, practically annulled in *Matter of Barbour*, 185 App. Div. 445; 173 Supp. 276; aff. 226 N. Y. mem. The court substantially held that the act merely created a presumption which could be overcome by evi-

dence. In the course of its opinion the court discusses the underlying principles of inheritance taxation as follows:

“While technically the tax may be considered as resting upon the actual passing of the estate by death, rather than upon the right to regulate the same, and, therefore, in *Knowlton v. Moore* it was held that the Federal Government possessed the right to impose such transfer tax, nevertheless as between the State of New Jersey, where testator had resided and been domiciled practically all of his lifetime, and the State of New York, where he was temporarily staying at the time of his death, it cannot be said, under the authorities hereinbefore cited disapproving of double taxation and providing for taxation of transfers exclusively by the State having dominion over the property transferred and regulating the succession, that the State wherein testator was temporarily staying when his death occurred should have authority to impose the tax. At common law there was no right of succession in property. When a person died his property reverted to his sovereign. Except for statutory enactments of the various States permitting the disposition of property by will or in case of intestacy that the property of a deceased person shall pass to the persons named in the statute, the property of a person dying would revert to the State in which he resided. By virtue of the laws of the State of New Jersey, the property of decedent passed under the provisions of his will. Not only the power to regulate the succession, but the very transmission and receipt itself of the property transferred rested upon the laws of the State of New Jersey. To that State belongs the exclusive right to impose the tax upon such transfer.

“With reference to the power of the Legislature to enact a statute of the force which the Comptroller seeks to give to the amendment of 1916 to the Transfer Tax Law, while it is not open to serious dispute that it has power to



enact that one fact shall be evidence of another, it is a self-evident proposition that the Legislature cannot make so that which is not so. When, as here, the statute says that under the circumstances named residence shall be *deemed* to exist, and the fact is that it does not exist, the statute does not make the fact otherwise than it is. At most, it creates a presumption which may be overcome by evidence to the contrary.

“No question can be raised as to the good faith of decedent in maintaining his residence in New Jersey. A very different situation is presented from that of the tax-or jury-dodger. The evil corrected and the jury service required by the Code provisions was concerning a duty of citizenship arising during the lifetime of the citizen when he was in the enjoyment of the State’s protection to his person and property. The situation with which we are dealing is much different. Here is an attempt to seize upon for taxation, not only decedent’s property, real and personal, which was physically present and under the protection of the State at the time of death, but also all other personal property of which the decedent was then possessed and which passed only by virtue of certain laws of another State permitting the beneficiaries under decedent’s will to succeed thereto.

“The taxation of inheritance is of long standing. In England, death duties have been imposed for centuries. Other European countries have adopted such form of indirect taxation, under such various names as death duties, legacy taxes, succession duties, inheritance taxes, probate duties, estate taxes, privilege taxes, etc. In 1797 our Federal Government imposed a legacy tax. (1 U. S. Stat. at Large, 527, chap. 11.) Since then several acts of a similar character have been passed by Congress. The present Federal statute providing an estate tax upon the transfer of the net estate of a decedent was enacted in 1916.

(39 U. S. Stat. at Large, 777, chap. 463, tit. 2, as amd.) Under former statutes the right of the Federal Government to impose a tax of this character has been questioned, because of the fact that such a tax is upon the right of succession, and which right may alone be regulated by a State. But in *Knowlton v. Moore*, 178 U. S. 41, it was pointed out that such a tax is imposed upon the transmission or receipt of the property, rather than upon the right to regulate such transmission or receipt after death, and the court there held the act constitutional, notwithstanding the devolution of the property transferred was under the control of the State of New York, where the testator in that case was domiciled.

“I think the most that can be said of this statute is that the facts therein mentioned with reference to a person dwelling and lodging within the State, during the period mentioned, create a mere disputable presumption of residence, liable to be overcome by evidence to the contrary. The evidence produced upon the hearing by the executors of the testator’s will destroyed any presumption of a residence in the State of New York from the fact of the testator dwelling and lodging here during the period preceding his death.”

#### f. DISTINCTION BETWEEN TANGIBLES AND INTANGIBLES ABOLISHED.

By chapter 626, L. 1919, the Legislature has abolished the distinction between tangibles and intangibles and taxed the transfer of stock in domestic corporations owned by nonresident decedents. Although the law as it stood prior to 1911 is not quite restored a very large share of all property of nonresident decedents within the State is now subject to the transfer tax. The statute is not wholly clear and important questions of construction will doubtless arise under it.

#### 4. Recent Amendments.

Although the law assumed a formative stage under the act of 1911, important defects and omissions continued to develop, and as they appeared the Legislature endeavored to correct them.

##### a. EXEMPTIONS.

Until 1911 there had been but one exemption to the entire estate, or rather, estates of less than \$10,000 were not taxed at all when passing to near relatives, but when above that amount the tax was levied on the entire estate. It was discovered that the statute of 1911 was so worded in giving each beneficiary an exemption of \$5,000 in case of near relatives that one exemption might be allowed on property given in contemplation of death and a second exemption of a like amount on property passing to the same beneficiary by the will of the same decedent.

*Matter of Hodges*, 215 N. Y. 447.

This was not the intent of the Legislature, and by chapter 664, L. 1915, the language of section 221a was changed to mend the flaw.

##### b. JOINT ESTATES.

Another and more serious loophole was discovered in the matter of joint bank deposits and joint holdings of stock. Estate attorneys had begun advising their clients — particularly married people, that by putting large holdings of stock in their joint names taxation would be avoided on the death of either joint tenant — and this was the result.

*Matter of Tilley*, 166 App. Div. 240; 151 Supp. 79; aff. 215 N. Y. 702.

*Matter of Thompson*, 167 App. Div. 354; 153 Supp. 166; aff. 217 N. Y. 609.

*Matter of Dalsimer*, 167 App. Div. 365; 153 Supp. 58; aff. 217 N. Y. 608.

Once again the statute had to be patched. Chapter 664, L. 1915, inserted the following as subd. 7, § 220:

“Whenever intangible property is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased tenant by the entirety, joint tenant or joint depositor and had been bequeathed to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons by such deceased tenant by the entirety, joint tenant or joint depositor by will.”

For cases construing this amendment, see *Joint Tenants, ante*, p. —.

#### c. TENANCY BY THE ENTIRETY.

Such tenancies have universally been held not taxable on the death of one of the tenants. In the matter of joint estates the amendment of 1915 had used the word “intangible” and had then attempted to tax the devolution on the death of one tenant by the entirety. This was nonsense, as there is no such tenancy of personal property, and yet the language of the act excluded real estate. The word “intangible” was stricken out of the first line of section 220, subd. 7, by chapter 323, L. 1916.

#### d. COMPUTATIONS.

In ascertaining the value of life estates and remainders the statute required calculations to be made on the same basis that life insurance policies are valued. But these calculations are based on the payment of the premium in

advance and the payment of the death loss at the end of the policy year.

Although an estate passes to the remainderman immediately upon the death of the life tenant the same method of calculation was followed on the theory that the statute so provided. As a result the present value of the life estate, plus the present value of the remainder, did not equal the entire estate by exactly 5% of the value of the remainder.

In other words, about 5% of every remainder, where there was a life use and a remainder over, escaped taxation through this discrepancy, and this had continued ever since the statute was enacted — resulting in a large aggregate loss. Through the influence of Comptroller Travis this discrepancy was abolished by chapter 550, L. 1916, amending sections 230 and 231 in regard to the calculation of life estates and remainders. Hereafter the whole must equal the sum of all its parts in calculations of the inheritance tax.

#### e. THE NEW RATES AND EXEMPTIONS.

This brings us to an important amendment of the present statute. Chapter 548, Laws of 1916, in effect May 15, 1916, amended sections 221 and 221a, radically changing the graded rates and exemptions, as will appear from the following table.

TABLE OF GRADED RATES AND EXEMPTIONS AS ESTABLISHED  
BY CHAP. 548, L. 1916.

*In Effect May 15, 1916.*

CLASS OR RELATIONSHIP	Amount exempt	Above Exemption Where Allowed			
		Up to 25,000	25,000 to 100,000	100,000 to 200,000	In excess of 200,000
		per cent 1	per cent 2	per cent 3	per cent 4
Father, mother, husband, wife, child, adopted child.	\$5,000				
Lineal descendants .....	Not taxed if less than \$500.	1	2	3	4
Brother, sister, son-in-law, daughter-in-law, mutually acknowledged child.		2	3	4	5
All others, except charitable and other corporations specifically exempted.		5	6	7	8

Two important litigations have arisen over the construction of the new rates under the act of 1916. It was held by the Comptroller that “child” in the act did not include “adopted child,” and that the latter was not entitled to any exemption if the bequest or distributive share was in excess of \$5,000; but the courts have held that an adopted child takes rank with a natural child and is entitled to an absolute exemption.

*Matter of Barnaby*, 104 Misc. 362; 171 Supp. 989.

The lower courts held that the exemption of \$500 where the bequest was in excess of \$500 was absolute. The Comptroller contended that, except in the case of a father, mother, husband, wife or child, the tax was to be assessed upon the entire estate, if it exceeded the exemption.

The question arose before Surrogate Atwell in *Matter of Bunce*, 100 Misc. 385, who held against the Comptroller. He was affirmed without opinion by the Appellate Division, Fourth Department (178 App. Div. 954; 165 Supp. 426). The opinion of the Surrogate is necessary to understand the situation and is as follows:

“The decedent died subsequent to May 15, 1916, so that the amendment to the tax law of that year, chapter 548, which became a law and went into effect on that date, applies to this case. Upon transfer tax proceedings it appeared that the net value of the estate was \$1,646.19; that the legacy given to one Loren Van Volkenburg, amounting to \$647.54, is the only taxable bequest. The order of the Surrogate assessing the tax allowed an exemption of \$500, assessing only the excess of \$147.54 upon which a tax of 5% was levied amounting to \$7.37.

“From this order the Comptroller has appealed, claiming that no exemption should have been allowed, but that the tax of 5% should have been levied upon the whole amount of the legacy.

“It seems to me that appellant’s position is untenable. His contention seems to be based upon the decision construing the amendment of 1910 (chapter 706) in *Matter of Mason*, 69 Misc. 280. The language used in that statute is very different from that used in the amendment under consideration; there the statute reads: “If \* \* \* of more than five hundred dollars it shall be taxable under this article, etc.”

“In the amendment of 1916 the statute speaks only of ‘excess’; section 221c. d. 3, applies to this case. It reads, ‘Upon all transfers taxable under this article of property or any beneficial interest therein any amount in *excess* of the value of five hundred dollars to any person or corporation \* \* \* the tax on such transfers shall be at the rate of, &c., &c.’

“Excess is defined by Webster to mean ‘the degree or amount by which one thing or number exceeds another; remainder or the difference between two numbers is the excess of one over the other.’ So in this statute it seems to be the clear intent of the Legislature that only the excess over and above five hundred dollars shall be taxed.

“This language is not new to the statute; it is substantially the same language that was employed in the act of 1911 (chapter 732), under which exemptions of \$5,000 to the near relatives and \$1,000 to collaterals and strangers have been allowed without question, and I cannot see or find any authority or justification for the contention now taken by the appellant.

“It is contended that putting the exemption of \$5,000 in certain cases in section 221 shows an intent on the part of the Legislature not to exempt a legatee enumerated in s. d. 3 of section 221a; in other words, that there is no exemption given to a legatee of that class unless his legacy does not exceed \$500. That would put the Legislature in the light of saying that a legatee who receives a bequest of \$500 or

less is exempt, but the legatee who receives a bequest of \$501 must pay a tax of \$25.00. I do not believe such was the intention; but it seems to me the intent of the act is that the tax should be levied only upon the excess over and above the sum of \$500 in all cases except those enumerated in s. d. 1 of section 221, in which the exemption of \$5,000 is allowed, and I cannot see how the placing of certain cases among the list of positive exemptions in section 221 changes the intent to be gathered from the language employed; and the provision of law imposing these transfer taxes (section 220) is subject to the provisions of sections 221 and section 221a whether they are called exemptions or limitations.

“The order appealed from must be affirmed. An order may be entered accordingly.”

In support of his contention the Comptroller cited:

*Matter of Mason*, 69 Misc. 280; 126 Supp. 998.

*Matter of Haley*, 89 Misc. 22; 152 Supp. 432.

*Matter of Dehnhardt*, N. Y. L. J., April 7, 1916.

It was certainly the intention of those who advocated the statute to restore the law to the exemptions of 1910 which had not only been construed in this State, but had been adopted in other jurisdictions.

*Herriott v. Bacon*, 110 Ia. 342; 81 N. W. 701.

*Gilbertson v. McAuley*, 117 Ia. 522; 91 N. W. 788.

*Stelwagen v. Durfee*, 130 Mich. 166; 89 N. W. 728.

*Matter of Howell*, 147 Pa. St. 164; 23 A. 403.

*Dixon v. Rickerts*, 26 Utah 215; 72 Pac. 947.

The Court of Appeals sustained the Comptroller and reversed the Surrogate, following the weight of authority in other States. It said: “Paragraphs 2 and 3 of section 221a fix the tax upon the transfer of property in excess of the value of \$500 to a brother or sister of the decedent or any person other than those enumerated in paragraph 1. Paragraphs 2 and 3 contain no words which exclude from taxation a transfer of property *less* than \$500 in value.



The legacy to the nephew in this case falls within the provisions of paragraph No. 3, and the whole amount thereof is taxable. It is not necessary to inquire as to what moved the Legislature in the one case to exempt from taxation transfers of property of less than \$5,000 in value and in the other case to tax the whole amount of the transfer if in excess of the value of \$500. It is sufficient to say that such is the plain import of the enactment.”

*Matter of Bunce*, 222 N. Y. 31.

#### f. MINOR AMENDMENTS OF 1917, 1918 AND 1919. .

All but one of these are of minor importance and may be briefly summarized as follows:

Chapter 53, L. 1917, adds to the list of exemptions real estate devised to a municipal corporation in trust for a specified purpose.

Chapter 128, L. 1917, provides for the remission of interest when the tax has been paid by mistake to the County Treasurer instead of the State Comptroller.

Chapter 194, L. 1917, affects the salary of the transfer tax clerk in Onondaga county.

Chapter 481, L. 1917, raises the salary of the transfer tax clerk in Queens county.

Chapter 482, L. 1917, increases the salary of appraisers in Erie and Suffolk counties.

Chapter 111, L. 1918, added library corporations to the exempt class in section 221.

Chapter 183, L. 1918, increases the salary of the appraiser in Chautauqua county.

Chapter 631, L. 1918, increases the salary of the appraiser in Nassau county.

Chapter 444, L. 1919, is a salary amendment.

Chapter 626, L. 1919, is important and is reviewed elsewhere. It taxes the transfer of stock in New York corporations held by nonresidents.

## 5. Additional Tax on Investments.

What has proved one of the most perplexing problems in the construction and application of inheritance tax statutes was afforded by chapter 700, L. 1917, which amended the tax law, article XV of the tax law as to the tax on investments, and added to the Transfer Tax Law, article X, a new section, numbered 221b, that section of the law being renumbered 221c.

The substance of this new section was to impose a flat tax of 5% on all investment securities which had not been placed on the assessment rolls and taxed annually, or upon which the owner failed to pay the stamp tax imposed by the investment tax law.

To understand the questions arising it is necessary to give the substance of article XV as amended by the act, as well as the new section inserted thereby in the Transfer Tax Law.

### a. THE STATUTE.

#### LAWS OF 1917, CHAP. 700.

AN ACT to amend the tax law, in relation to the tax on investments and transfers.

Became a law June 1, 1917, with the approval of the Governor. Passed, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. Article fifteen of chapter sixty-two of the laws of nineteen hundred and nine, entitled "An act in relation to taxation, constituting chapter sixty of the consolidated laws," as added by chapter two hundred and sixty-one of the laws of nineteen hundred and sixteen, is hereby amended to read as follows:

#### ARTICLE 15.

##### *Tax on Investments.*

#### Section 330. Definitions.

331. Payment of tax on investments.

332. Stamps, how prepared and used.

333. No exemptions unless stamps are affixed and canceled.

- 334. Contracts for dies; New York City office; expenses, how paid.
- 335. Illegal use of stamps; penalty.
- 336. No deduction of debts against taxable investments.
- 337. Application of taxes.
- 338. Exemption where tax has been paid on secured debts before May first, nineteen hundred and fifteen.
- 339. Exemption where tax has been paid on secured debts between May first, nineteen hundred and fifteen and December thirty-first, nineteen hundred and sixteen.
- 340. Apportionment of value of investment secured by mortgage of property situate partly within and partly without the state.

§ 330. Definitions. The word "investments," as used in this article shall include: Any bond, note, debt, debenture, equipment bond or note, or written or printed obligation, forming part of a series of similar bonds, notes, debts, debentures, written or printed obligations, which by their terms are payable one year or more from their date of issue and which are either secured by a mortgage, pledge, deposit, or deed of trust, of real or personal property, or both, or which are not secured at all; excepting bonds of this state or any civil division thereof and such bonds, notes, debts, debentures, written or printed obligations, which are secured by a deed of trust or mortgage recorded in the state of New York on real property situated wholly within the state of New York; excepting also such bonds, notes, debts, debentures, written or printed obligations held as collateral to secure the payment of investments taxable under this article or of bonds taxable under article eleven of this chapter; and excepting also such proportion of a bond, note, debt, debenture or written or printed obligation, secured by deed of trust or mortgage recorded in the state of New York of property or properties situated partly within and partly without the state of New York as the value of that part of the mortgaged property or properties situated within the state of New York shall bear to the value of the entire mortgaged property or properties.

§ 331. Payment of tax on investments. After this article takes effect, any person may take or send to the office of the comptroller of this state any investment, and may pay to the state a tax at the rate of twenty cents per year on each one hundred dollars or fraction thereof of the face value of such investment for one or more years not exceeding five, under such regulations as the comptroller may prescribe, and the comptroller shall thereupon affix stamps hereinafter provided for, to such investment, which stamps shall be duly signed by the comptroller or his duly authorized representative and dated as of the date of the payment of such tax. The comptroller shall keep a record of such investment together with the name and address of the person presenting the same and the date of payment of the tax.

All such investments shall thereafter be exempt from all taxation in the state or any of the municipalities or local divisions of the state except as provided in section twenty-four to twenty-four-g, both inclusive, one hundred and eighty-seven, one hundred and eighty-eight and one hundred and eighty-nine of this chapter, and in articles ten and twelve of this chapter for the period of years from the payment of such tax for which such tax shall have been paid and such stamps affixed.

§ 332. Stamps; how prepared and used.

§ 333. No exemption unless stamps are affixed and canceled.

§ 334. Contract for dies; New York City office; expenses, how paid.

§ 335. Illegal use of stamps; penalty.

§ 336. No deduction of debts against taxable investment. The owner of any investment, on which the tax provided for in this article has not been paid, shall be assessed upon such investment in the taxing district in which he resides, upon the fair market value of such investment and no deduction for the just debts owing by him shall be allowed against the assessed value of such investment, as provided in section six of this chapter or elsewhere in this chapter or in any other law of this state except that the deduction from the taxable property permitted by section six of this chapter shall be allowed to any person, in respect of any investment which for the purpose of his business as hereinafter described and not for or as an investment, shall be temporarily owned and held for sale by such person then actually engaged in the bona fide purchase and sale of such investments as a business, and who then shall have and maintain an office or place of business in this state for the carrying on of the actual bona fide business of purchasing and selling such investment as distinguished from the purchase thereof for investment, but such deduction shall not be allowed in respect of investments owned and held for a longer period than eight months.

§ 337. Application of taxes.

§ 338. Exemption where tax has been paid on secured debts before May first, nineteen hundred and fifteen.

§ 339. Exemption where tax has been paid on secured debts between May first, nineteen hundred and fifteen and December thirty-first, nineteen hundred and sixteen.

§ 340. Apportionment of value of investment secured by mortgage of property situated partly within and partly without the state.

§ 2. Section two hundred and twenty-one-b of such chapter as added by chapter six hundred and thirty-nine of the laws of nineteen hundred and thirteen, is hereby renumbered section two hundred and twenty-one-c, and a new section two hundred and twenty-one-b inserted to read as follows:

“§ 221-b. Additional tax on investments in certain cases.

“Upon every transfer of an investment, as defined in article fifteen of this chapter, taxable under this article, a tax is hereby imposed, in addi-

tion to the tax imposed by section two hundred and twenty-one-a, of five per centum of the appraised inventory value of such investment unless the tax on such investment as prescribed by article fifteen of this chapter or the tax on a secured debt as defined by former article fifteen of this chapter shall have been paid on such investment or secured debt and stamps affixed for a period including the date of the death of the decedent or unless the personal representatives of decedent are able to prove that a personal property tax was assessed and paid on such investment or secured debt during the period it was held by decedent; or unless the decedent was actually engaged in the bona fide purchase and sale of investments as a business, and at the time of his death had maintained an office or place of business in this state for the carrying on of the actual bona fide business of purchasing and selling investments, as distinguished from the purchase thereof for investment purposes, and had owned and held such investment for sale for the purpose of his business and not as investment for a period of not more than eight months prior to his death."

§ 3. Section one of this act shall take effect immediately. Section two of this act shall take effect July first, nineteen hundred and seventeen.

#### b. HELD UNCONSTITUTIONAL BY LOWER COURTS.

The practical application of this statute disclosed the fact that there were billions of unstamped bonds in the possession of estates which had never paid any taxes, and nearly a million dollars was collected from estates under the additional transfer tax when the act was held unconstitutional by Surrogate Cohalan of New York county in *Matter of Watson*, and his decision was unanimously affirmed by the Appellate Division, First Department. (186 App. Div. 48; 174 Supp. 19.)

The statute was bitterly attacked as being harsh, arbitrary and discriminatory. The State Comptroller said that the tax was salutary and essential.

The just taxation of investment securities has long been a vexatious problem. They yield but a small rate of interest, but their safety and stability makes them attractive to the very wealthy and to the fiduciaries of trust estates. To require that a 4% bond shall be assessed annually upon the tax rolls means that the owner must pay an average annual tax of 2% or upwards and amounts to the confiscation of

half his income. This situation furnishes one of the chief arguments for an income tax; but this method of taxation has now been pre-empted by the Federal Government and has not found general favor, as yet, with the State Legislatures.

In practice the holders of such investments have refused to disclose them to the assessors and have felt justified in evading taxation because of its gross injustice.

To meet this situation the Legislature enacted the Secured Debt Law (ch. 802, L. 1911), which enabled the holders of investment bonds to secure their exemption from personal property assessment by complying with its provisions and paying a nominal tax. This went to the other extreme and proved a failure as a producer of revenue. In 1912 only \$1,411,567.60 was received by the State under this law; in 1913, \$1,167,476.04, and in 1914 the receipts dropped to \$828,619.27.

The State Comptroller's report for 1916, p. 18, gives the following account of the subsequent progress of legislation:

“Various bills were introduced at the 1915 session of the Legislature relating to the Secured Debt Law. Certain proposals were made for the annual listing of securities and the imposition of a per annum tax at varying rates, all of which failed to pass; but the Legislature, by formal enactment, suspended the operation of the then Secured Debt Tax Law from April 1, 1915, to May 1, 1915, and enacted a law, which became operative May 1, repealing the old act and providing for the registration of secured debts from May 1, 1915, to November 1, 1915. Under this act the holder of any bond for which other provision for its exemption was not made under the General Municipal Law or the Mortgage Tax Law, could make such bond exempt for a period of five years by the payment of three-quarters of 1% of the face value of the debt (*i. e.*, \$7.50 per \$1,000 bond) to

the State Comptroller at his Albany or New York City office."

By chapter 700, L. 1917, the Investment Tax Law was amended to read as at present.

Section 221b of the tax law was enacted and it immediately proved very effective. Not only did it reveal a large amount of unstamped securities held by the estates of decedents and subject to the additional transfer tax, but the receipts of July, August and September, 1917, which are always the big months of the year as being just before the levy of personal taxes, were, respectively, \$230,402.02, \$151,288, \$742,824.60 — a total, \$1,224,514.80 — as against the receipts of those same three months in 1916 of \$41,040, \$508,455.75, \$14,368.25 — a total of \$563,854.10. This was an increase for those three months of over \$600,000, although the payments in 1916 were for a five-year period at the rate of \$7.50 for a thousand dollar bond, while payments in 1917 were for a one-year period at the rate of \$2.00 per thousand dollar bond.

#### c. ACT SUSTAINED BY THE COURT OF APPEALS.

The *Watson* case came before the Court of Appeals and was argued February 28, 1919, by Alexander Otis and John B. Gleason, Lafayette B. Gleason being attorney of record and the brief prepared under his direction. The questions involved went to the root of all inheritance taxation. No less than four trust companies representing large estates were allowed to intervene, the Court of Appeals departing from its usual practice and listening to the arguments of six counsel. The court was in serious doubt and reserved decision for three months; but it finally sustained the statute and reversed the decision of the lower courts. Chief Justice Hiscock and Justices McLaughlin and Collin dissented, while Judge Chase concurred in the result only. Judge Crane wrote the prevailing opinion, in which Judges

Cuddebeck and Hogan concurred. None the less, the opinion seems to settle the law and many of the difficulties of its application. After reviewing the authorities and stating the general doctrines applicable in all constitutional questions, Judge Crane says:

“From what has been said it will be apparent that the discretion given to the Legislature to tax property passing by will or inheritance is very broad.

“Assuming without deciding that the discretion to classify personal property which must pay an inheritance tax before passing by will or inheritance is limited to a classification which is based upon some reason and not the mere caprice of the Legislature, this present law under discussion comes with in such a rule.

“Holding up the section under discussion for comparison with these authorities as a pattern, does it fall within or without the line of constitutional limitation? In the first place we may consider this tax as though it were the first and only tax placed upon transfers. The fact that it is an additional tax does not change the principle involved. The tax is, then, one placed upon the transfer of property at the time of death which has not theretofore paid any tax, local or State.

“The objection cannot be pressed that the beneficiary under the will is punished for the misdeeds of the ancestor in not paying a local or State tax. The beneficiary has no claim to the property of an ancestor except as given by law, and, if the State has a right to impose a tax at all upon the passing of property, the transferee takes only what is left after the tax is paid. The State, therefore, having the power to place an inheritance tax upon property which has escaped taxation during the lifetime of the testator, it is no valid objection that the legatee may deem himself punished by the circumstance. Neither is there foundation in the authorities for the assertion or implication that the inher-



itance tax laws must look with indifferent eye upon the kind of property transferred and cannot single out personalty as distinguished from realty and the life. Difficulties in practical application of the statute are perhaps more imaginary than real, but if they do exist, such difficulties are a matter for legislative and not judicial consideration. (*Matter of McPherson*, 104 N. Y. 306, 324.) Slight inequalities or injustice which may follow from the application of this law as it is applied by the taxing authorities are not in and of themselves constitutional objections (*Matter of White*, 208 N. Y. 64), unless they become so great as to violate the principles stated.

“A further objection has been urged upon us. It is that the act illegally exempts dealers in investments and thus makes this law unequal in operation.

“By section 336 of the tax law, as amended by chapter 700 of the Laws of 1917, the owner of any investment, as defined by the article (article XV) shall be assessed upon such an investment in the tax district where he resides upon the fair market value thereof without deduction for his just debts, except that such deduction may be allowed to any person in respect to any investment which, for the purpose of his business, shall be temporarily owned and held for sale by him, then actually engaged in the *bona fide* purchase and sale of such investments as a business. Such deduction shall not be allowed in respect to such investments held for a longer period than eight months.

“Section 221b also contains a like exception from the inheritance tax upon property which has not paid a local or State tax. That is, the section does not apply to a decedent who was actually engaged in the *bona fide* purchase and sale of investments as a business at the time of his death and had and maintained an office in this State for that purpose. The exception does not apply if the investments are held for eight months. All exemptions do not render tax laws

unconstitutional. There are many reasons for exempting a certain amount of property, or a class of property, or institutions, such as charitable organizations and persons carrying on religious work. (*American Sugar Refining Co. v. La.*, 179 U. S. 89; *Union Sewer Pipe Co.*, 184 U. S. 540; *Northwestern Life Ins. Co. v. Wisconsin*, 247 U. S. 132, 140.)

“Dealers in investments, as a business, disposing of their bonds as vendors or brokers within a few months after acquisition, cannot be considered the holders of such property for investment purposes. They may sell indifferently to persons within and without the State; they may hold a large amount of bonds with borrowed capital for the purpose of organizing or developing corporate enterprise. It cannot reasonably be expected that a dealer would pay the present State tax on all such securities passing through his hands in transfer from seller to purchaser, or held by him solely for sale on profit. There is a reason, we think, for such an exemption which saves this law from being a violation of that equality demanded of legislation.

“Illustrations of how this tax may work inequitably, if the exemptions are allowed to certain relatives under section 221, have been conceived by the courts below. Sufficient to say that in our judgment the exemptions do not apply to section 221b. It is a flat tax of 5% upon the transfer of property not theretofore taxed as specified. Reference to the investments taxable under this article means the investment securities specified by article XV passing by inheritance and taxed as stated in article X. The exemptions are classified by section 221 as exceptions and limitations and are not continued to cover the additional tax.

“Again, it must be noted, that if the amount of an estate is eaten up by debts so that the assets consisting of these investments do not pass to anybody, of course there can be no tax. Likewise, the investments should pay their proportionate part of the debts without tax.

“One of the intervenors has taken the position that the said investment tax, article XV of the tax law, is wholly unconstitutional, in that it withdraws a certain portion of property from personal assessment by local officials. The claim is made that this is contrary to the local self-government policy as enacted into the State Constitution by section 2, article X, and he refers to *People v. Pelham*, 215 N. Y. 374.

“No attempt is made by this Investment Tax Law to give to State officials the right to tax for local purposes, or the functions of local representatives. The State has the right to tax for its own purposes. A case might arise where so much property was withdrawn from local assessment as to deprive local officials substantially of all their power, but such is not this case — far from it.

“While the assessment of property for the purposes of taxation in this State has always been a function of local officers, their duties may be modified or regulated by the Legislature so long as there is no substantial impairment of the right of home rule or no intent or attempt to evade the constitutional provisions. (*People v. Draper*, 15 N. Y. 541; *Astor v. The Mayor*, 62 N. Y. 567, 573; *Devery v. Coler*, 173 N. Y. 103; *Mayer v. The Tenth National Bank*, 111 N. Y. 446.)

“By the Mortgage Tax Law (*Eisman v. Ronner*, 185 N. Y. 285), the assessment of mortgages was taken for the local authorities and a flat rate fixed by the State, one-half of the moneys going to the State and one-half to the locality. The assessors no longer had any judicial discretion in the assessment of mortgages. All the duties and powers, however, of the assessors were left intact except as to this species of property. The Legislature, by section 4 of the tax law, has created a list of exemptions from general taxation which, so far as I can discover, have never been questioned as illegal because in violation of article X, section 2.

In the franchise tax case (*People ex rel. Met. St. Ry. Co. v. Tax Commissioners*, 174 N. Y. 417), it is recognized by this court that certain conditions or nature of property which results in its escape from taxation may authorize the Legislature to provide means and methods for its assessment.

“In this case of the bond investment tax, a large amount of property could not be reached for assessment by the local authorities. As above stated, there was no means under the law to determine who held such securities and to what amount. The estates passing through the Surrogates’ Courts bore witness to the inability of the existing tax system to equalize the burden and to reach all property.

“To remedy this condition, the Legislature passed article XV of the Tax Law which permitted a flat rate of tax upon such investment securities as might otherwise go untaxed; and, with the intent, no doubt, of inducing bond-holders to make known their holdings and to submit to this tax, it exempted such property from the inequality and irregularities of local assessment. This was an attempt to reach a class of property which was not bearing its proportionate part of governmental expenses, to make just the tax laws and to meet a situation which for a long time had been apparent to everyone familiar with the subject and which was quite difficult to regulate. The nature of the holdings made the local assessments many times unequal and unjust, often bearing heavier upon a small owner than upon one possessed of large amounts unknown to the assessors.

“The withdrawal of property by exemption from local assessment may be so arbitrary or so extensive as to interfere with local self-government and with the principles of home-rule. Such instances would clearly be unconstitutional.

“The tax on investments, however (article XV of the Tax Law) is not, in our opinion, an evasion of an attempt

to evade the homerule provisions of the Constitution, was not passed with the intention of interfering with the local authorities in their taxing powers and is not a substantial change in the duties of assessors.

“As I stated in the beginning, the facts of this controversy are very simple and free from complication. The testator left hardly any debts, and securities within the Investment Tax Law which had not been subjected to any tax by local or State authorities. The circumstances were easily ascertainable and are not disputed. No difficulty has arisen in ascertaining and fixing the amount of the tax.

“We treat this case, therefore, as it is presented without trying to devise instances where the law might violate fundamental principles. We cannot now see how it is unconstitutional. Time is more fecund than the mind and instances may arise hereafter which may present other and further questions regarding this law. Experience in application may furnish information which we do not now possess, and as to such question we reserve the right to consider them as and when they arise.

“Every presumption is in favor of the constitutionality of an act of the Legislature and, if the Constitution and the act can be reasonably construed so as to enable the latter to stand, it is the duty of the courts to give them that construction. (*Met. St. Ry. Co. v. Tax Commissioners*, 174 N. Y. 434, 437.)

“It is said that we must treat the Investment Tax Law as though it were a compulsory tax upon the face value of bonds or the actual value without any opportunity to be heard as to the amount assessed. The tax on investments is not compulsory but optional. An owner is not compelled to submit to a State tax. He may register his bonds with the State Comptroller and pay a certain amount according to face value and thus free the securities from local assessment. If he does not choose to do this he can

submit to local assessment which is according to *actual value with full opportunity to be heard*. How can it be claimed that Article XV of the Tax Law is compulsory or upon what theory can an owner say that he was forced to pay the State tax when he does so voluntarily in order to escape a greater tax according to actual value? We are seeking to force upon an owner a situation which he neither welcomes nor has requested. The tax under the investment law has been in operation since 1911 and millions of dollars have been paid to the State under its reasonable regulations. It has never yet been directly attacked.

“When we pass upon the constitutionality of Article XV, known as the tax on investments, we cannot read into it any other law, nor hold it unconstitutional because of the provisions of Article X, providing for tax on transfers. The two laws are separate and distinct and governed by entirely different principles. Leaving out of consideration entirely section 221-b, let us determine first whether or not the tax on investments is illegal. We must construe it as compulsory in order to make it illegal. There is nothing whatever in the law itself that compels submission to a State tax. It is entirely voluntary. The compulsion is said to be in section 221-b providing for a tax upon property passing at death. As heretofore stated by me in this opinion the State is free to place an inheritance tax upon any property passing by death to others. Having placed such a tax upon the actual value of bonds which have paid neither a local assessment or a State tax (which is optional and therefore legal), there is no ground for holding such inheritance tax unconstitutional. The selection of such property for inheritance tax is within the powers of the Legislature.

“To say that a man is compelled to pay a State tax in order to avoid this inheritance tax when he could pay the ordinary local assessment upon the actual value of his hold-

ings and achieve the same end is carrying the constitutional protection to an unreasonable extent.

“What is said about the violation of the ‘Home-Rule’ provision is equally applicable to the Mortgage Tax Law and would render Article XI (tax on mortgages) also unconstitutional in spite of *People ex rel. Eisman v. Ronner*, 185 N. Y. 285. The tax here provided is a tax of fifty cents for each one hundred dollars on the *principal or obligation secured*, half of which goes to the State. Mortgages are not otherwise taxable.

“We, therefore, conclude that the estate of Charles W. Watson, deceased, must be assessed under section 221-b, of the Tax Law, upon that amount of personalty coming within the Investment Law which was not assessed by the local authorities or over and above the amount assessed and which did not pay any tax to the State.

“Order reversed. Matter remitted to the Surrogate’s Court for the entry of a decree in accordance with these directions.”

*Matter of Watson*, 226 N. Y. 384.

#### d. QUESTIONS OF CONSTRUCTION.

Although the decision in the Watson case determines the constitutionality of the law it leaves many questions of construction and application open to further litigation. Several of these were not involved in the Watson case. Judge Crane’s opinion intimates his position upon them, but only two judges concur in the opinion, while Judge Chase concurs in the result only, so they must still be regarded as unsettled until they are presented, as they arise.

##### (1.) As to Personal Property Assessment.

Surrogate Fowler, of New York County, has held that where investment bonds could not be included in the personal property assessment after purchase and before death

the tax does not apply, although the decedent had ample opportunity to pay the stamp tax, had he chosen to do so.

*Matter of Otis*, 103 Misc. 655.

Where a personal property assessment has been paid, but that assessment is less than the value of the bonds, the question arises whether it was the bonds that were assessed or other property, and whether the additional tax is due under the act. Under these circumstances the New York County Surrogate holds that the whole tax is due and payable. The question arose in *Matter of Von Bernuth*, New York Law Journal, May 16, 1918. The court thus disposes of the problem:

“The purpose of the Legislature in enacting the amendment above referred to was evidently to prevent, as far as possible, a continuance of the notorious evasion of the payment of personal property taxes. If it were held that the proof of a personal property assessment of \$1,000 would be sufficient to exempt from taxation under section 221-b investments having a value of \$100,000, the purpose of the amendment would not be effectuated. The executrix contends that the assessors would have the right to assess ten bonds at \$4,600, but she does not show that the ten bonds were the only personal property liable to taxation which the decedent had in this State on October 1, 1916. As no deduction for the value of the bonds could be made for the debts of the decedent (§ 336 of the Tax Law) it is difficult to see how the ten bonds could be assessed for \$4,600 and the conclusion is almost irresistible that the ten bonds were not assessed by the assessors. If effect is to be given to the intention of the Legislature in enacting the amendment, the personal representatives of a decedent must show what property was submitted to the assessors for assessment; or, if it is not desired that such a disclosure should be made, the decedent, in his lifetime should have paid the tax pro-



vided by section 331 of the Tax Law. Payment of that tax precludes the necessity of making the proof of assessment required by section 221-b. If, therefore, a person fails to pay the tax required by section 331, he should not be heard to complain that the requirements of section 221-b are difficult of fulfillment. If section 221-b constitute an independent taxing provision, it should be strictly construed; but as it is merely alternative, it should be construed so as to effect the obvious intention of the Legislature.”

Judge Crane intimates that the amount of any personal property assessment not equal to the full value of the bonds is a deduction *pro tanto*. As matter of proof this may present some practical difficulty. The burden of proof is probably on the estate, but as to this there is as yet no authority.

## (2.) As to Exemptions.

One of the chief grounds upon which the constitutionality of the statute was assailed was that it operated unequally on account of the exemptions. A widow who received \$5,000 in unstamped investments would, under this theory, pay no tax and no penalty would be imposed for the omission of the stamps. As Judge Shearn states it, writing for the Appellate Division:

“The decedent may have omitted to stamp his securities in compliance with Article XV, or former Article XV, and the securities he owned may pass to a beneficiary, who by the operation of the usual exemptions, pays no transfer tax, and in this event, the omission of the decedent to duly comply with the law goes unpunished. On the other hand, the decedent’s securities may descend to a beneficiary who has to pay a tax under the operation of the normal transfer tax law, and in that event the decedent’s omission is punished by the infliction of the additional tax upon the beneficiary. It is not the existence of the omission which determines the

application of the penalty, but whether the transfer of the particular securities is or is not subject to the transfer tax act. This is neither due process of law, nor does it afford all persons the equal protection of the laws.”

Judge Crane disposes of this objection by holding that the exemptions provided for by section 221 do not apply to the additional tax imposed by section 221-b. It may therefore happen that many small estates which would escape taxation on account of the exemption will none the less have to pay the additional tax, and that the tax will also affect bequests to charitable corporations.

### **(3.) As to Debts.**

Assume the estate is insolvent, but consists largely of unstamped securities, is the tax of 5%, none the less imposed? If it is a “flat tax” the logic would seem to be that it must be paid by the creditors, but the Court of Appeals holds that, if there is no estate, there is no transfer, and hence, no additional transfer tax. No statute provides specifically for the deduction of debts. It is on this theory that they are deducted in determining the net estate subject to transfer tax and the reasoning would seem to be sound, though not necessarily concurred in by a majority of the court. The opinion also holds that all debts are a *proportionate* deduction from the value of the unstamped investment securities.

This presents a problem in practical application. Is real estate to be included in ascertaining the proportion of assets to debts in arriving at the taxable value of the investment securities? The State Comptroller holds that it should be, but the question has not yet been litigated.

### **(4.) Who Must Pay?**

If the investment securities are specifically bequeathed, it would seem obvious that the tax must be assessed against the beneficiary receiving them. If they are not so be-

queathed or pass by intestacy, it would seem equally well settled that they are deemed to be distributed among the heirs in proportion to their interest and hence the tax would be divided accordingly among the beneficiaries.

## **6. The Income Tax.**

The Income Tax Law, Chapter 627, Laws of 1919, may be held to repeal by implication the tax on investments, and hence, section 221-b. In any event its effect thereon is matter for judicial construction. The especial attention of the bar is called to section 359, paragraph 2, subdivision d, which is as follows:

d. Interest upon the obligations of the United States or its possessions; or securities issued under the provisions of the federal farm loan act of July seventeen, nineteen hundred and sixteen; or bonds issued by the war finance corporation; or the obligations of the state of New York or of any municipal corporation or political subdivision thereof; or investments upon which the tax provided for in section three hundred and thirty-one of this chapter has heretofore been paid since June first, nineteen hundred and seventeen, during the period of years for which such tax shall have been paid.

## **7. Text of the New York Statute with Amendments to Date.**

May 14, 1919, the Governor signed chapter 626, L. 1919, amending sections 220 and 243, which abolishes the distinction between tangible and intangible property which has existed in the law ever since 1911. The transfer of the tangible property of resident decedents is taxed, although such property is not within the State and the transfer of the intangibles of nonresident decedents is taxed with certain exceptions. Where the decedent died prior to May 14, 1919, his estate is taxed under the law as it existed prior to that date, and where death occurred after that date the estate is taxed pursuant to the amendment. It has therefore seemed advisable to give the sections as they stood with matter omitted in brackets and the matter inserted in

italics. Aside from this, Article X of the Tax Law, being Chapter 62, Laws of 1909, is as follows, with amendments to date:

## ARTICLE 10

### Taxable Transfers

PAGE

Section	220. Taxable transfers .....	733
	221. Exceptions and limitations.....	736
	221-a. Rates of tax.....	738
	221-b. Additional tax on investments.....	739
	221-c. Exemption of certain personal property	740
	222. Accrual and payment of tax.....	740
	223. Discount and interest.....	741
	224. Lien of tax and collection by executors, administrators and trustees.....	742
	225. Refund of tax erroneously paid.....	743
	226. Taxes upon devises and bequests in lieu of commissions .....	744
	227. Liability of certain corporations to tax..	745
	228. Jurisdiction of the surrogate.....	746
	229. Appointment of appraisers, stenogra- phers and clerks.....	747
	230. Proceedings by appraiser.....	750
	231. Determination of surrogate.....	753
	232. Appeal and other proceedings.....	754
	233. Composition of transfer tax upon certain estates.....	756
	234. Surrogates' assistants in New York, Kings and other counties.....	756
	235. Proceedings by district attorneys.....	758
	236. Receipts from county treasurer or comp- troller.....	760
	237. Fees of county treasurer.....	761
	238. Books and forms to be furnished by the state comptroller .....	761
	239. Reports of surrogate and county clerk...	762

## PAGE

Section 240. Reports of county treasurer.....	763
241. Report of state comptroller; payment of taxes; refunds in certain cases.....	763
242. Application of taxes.....	766
243. Definitions. . . . .	766
244. Exemptions in article one not applicable.	768
245. Limitation of time.....	768

§ 220. Taxable transfers. A tax shall be and is hereby imposed upon the transfer of any [tangible] property [within the state and of intangible property] *real or personal*, or of any interest therein or income therefrom in trust or otherwise, to persons or corporations in the following cases, subject to the exemptions and limitations hereinafter prescribed:

1. When the transfer is by will or by the intestate laws of this state [of any intangible property, or of tangible property within the state,] from any person dying seized or possessed thereof while a resident of the state.

2. When the transfer is by will or intestate law, *of real property within this state, or of goods, wares and merchandise within this state, or of shares of stock of corporations organized under the laws of this state, or of national banking associations located in this state, and the decedent was a nonresident of the state at the time of his death; or of* [tangible] property [within the state or of any intangible property if] evidenced by or consisting of shares of stock *of a foreign corporation, joint stock company or association, or bonds, notes, mortgages or other evidences of interest in any corporation, joint stock company or association wherever incorporated or organized, except the shares of stock of a foreign corporation,* [foreign or domestic, or] joint stock company or association, *or the bonds, notes, mortgages or other evidences of interest in any corporation, joint stock company or association, domestic or*

*foreign*, constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation, or a public service or manufacturing corporation as defined and classified by the laws of this state, and the property represented by such shares of stock, bonds, notes, *mortgages* or other evidences of interest, consists of real property which is located wholly, or partly, within the state of New York, or of an interest in any partnership business conducted, wholly or partly, within the state of New York, *and if not wholly within the state of New York, then* in such proportion as the value of the real property of such corporation, joint stock company or association, or as the value of the entire property of such partnership located in the state of New York bears to the value of the entire property of such corporation, joint stock company or association or partnership, and the decedent was a nonresident of the state at the time of his death; or when the transfer is by will or intestate law of capital invested in business in the state by a nonresident of the state doing business in the state either as principal or partner.

3. Whenever the property of a resident decedent, or the property of a nonresident decedent within this state, transferred by will is not specifically bequeathed or devised, such property shall, for the purposes of this article, be deemed to be transferred proportionately to and divided pro rata among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will.

4. When the transfer is of [intangible] property [or of tangible property within the state] made by a resident, *or is of real property within this state, or of goods, wares and merchandise within this state, or of shares of stock of corporations organized under the laws of this state or of national banking associations located in this state, made by a nonresident*; or of [tangible] property [within the state or

of any intangible property, if] evidenced by or consisting of shares of stock of a foreign corporation, joint stock company or association, or bonds, notes, mortgages or other evidences of interest in any corporation, joint stock company, or association wherever incorporated or organized, except the shares of stock of a foreign corporation [foreign or domestic, or] joint stock company or association, or the bonds, notes, mortgages or other evidences of interest in any corporation, joint stock company or association, domestic or foreign, constituting, being or in the nature of a moneyed corporation, a railroad or transportation corporation, or a public service or manufacturing corporation as defined and classified by the laws of this state, and the property represented by such shares of stock, bonds, notes, mortgages or other evidences of interest consists of real property which is located, wholly or partly within the state of New York, or of an interest in any partnership business conducted, wholly or partly, within the state of New York, and if not wholly within the state of New York, then in such proportion as the value of the real property of such corporation, joint stock company or association, or as the value of the entire property of such partnership located in the state of New York bears to the value of the entire property of such corporation, joint stock company or association or partnership made by a nonresident or capital invested in business in the state by a nonresident of the state doing business in the state either as principal or partner by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, or donor or intended to take effect in possession or enjoyment at or after such death.

5. When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer whether made before or after the passage of this chapter.

6. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of prop-

erty, made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.

7. Whenever property is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property, shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased tenant by the entirety, joint tenant or joint depositor and had been bequeathed to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant or joint depositor by will.

8. The tax imposed hereby shall be upon the clear market value of such property at the rates hereinafter prescribed.

[As amended by chap. 706, L. 1910; chap. 732, L. 1911; chap. 664, L. 1915; chap. 323, L. 1916, and chap. 626, L. 1919.]

§ 221. **Exceptions and limitations.** Any property devised or bequeathed for religious ceremonies, observances or commemorative services of or for the deceased donor, or to any person who is a bishop or to any religious, educational, charitable, missionary, benevolent, hospital, library or infirmary corporation, wherever incorporated, including corporations organized exclusively for bible or tract purposes and corporations organized for the enforcement of laws relating to children or animals, or real property to a



municipal corporation in trust for a specific public purpose, shall be exempted from and not subject to the provisions of this article. There shall also be exempted from and not subject to the provisions of this article personal property other than money or securities bequeathed to a corporation or association wherever incorporated or located, organized exclusively for the moral or mental improvement of men or women or for scientific, literary, library, patriotic, cemetery or historical purposes or for two or more of such purposes and used exclusively for carrying out one or more of such purposes. But no such corporation or association shall be entitled to such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees or if it be not in good faith organized or conducted exclusively for one or more of such purposes. There shall also be exempted from and not subject to the provisions of this article all property or any beneficial interest therein so transferred to any father, mother, husband, wife, widow or child of the decedent, grantor, donor or vendor if the amount of the transfers to such father, mother, husband, wife, widow or child is the sum of five thousand dollars or less; but if the amount so transferred to any father, mother, husband, wife, widow or child is over five thousand dollars, the excess above these amounts, respectively, shall be taxable at the rates set forth in the next section.

The provisions of section two hundred and twenty-one,

as amended by this act, shall apply to real property heretofore devised to a village in trust for street purposes; and any tax which may heretofore have been fixed or imposed, under article ten of the tax law, on account of such transfer of real property subsequent to the twenty-sixth day of March, nineteen hundred and thirteen, is hereby rescinded and revoked.

[As amended by chaps. 600 and 706, L. 1910; chap. 732, L. 1911; chap. 206, L. 1912; chaps. 356 and 795, L. 1913; chap. 548, L. 1916, and chap. 534, L. 1917.]

§ 221-a. **Rates of tax.** 1. Upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five thousand dollars, to any father, mother, husband, wife, or child of the decedent, grantor, donor or vendor, or to any child adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor, or upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five hundred dollars to any lineal descendant of the decedent, grantor, donor or vendor, born in lawful wedlock, the tax on such transfers shall be at the rate of

One per centum on any amount up to and including the sum of twenty-five thousand dollars;

Two per centum on the next seventy-five thousand dollars or any part thereof;

Three per centum on the next one hundred thousand dollars or any part thereof;

Four per centum on the amount representing the balance of each individual transfer.

2. Upon all transfers taxable under this article of property or any beneficial interest therein in excess of the value of five hundred dollars or more, to a brother, sister, wife or widow of a son, or the husband of a daughter of the decedent, grantor, donor or vendor, or to any child

to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, the tax on such transfers shall be at the rate of

Two per centum on any amount up to and including the sum of twenty-five thousand dollars;

Three per centum on the next seventy-five thousand dollars or any part thereof;

Four per centum on the next one hundred thousand dollars or any part thereof;

Five per centum on the amount representing the balance of each individual transfer.

3. Upon all transfers taxable under this article of property or any beneficial interest therein of an amount in excess of the value of five hundred dollars, to any person or corporation other than those enumerated in paragraphs one and two of this section the tax on such transfers shall be at the rate of

Five per centum on any amount up to and including the sum of twenty-five thousand dollars;

Six per centum on the next seventy-five thousand dollars or any part thereof;

Seven per centum on the next one hundred thousand dollars or any part thereof;

Eight per centum on the amount representing the balance of each individual transfer.

[As amended by chap. 732, L. 1911; chap. 664, L. 1915; chap. 548, L. 1916.]

§ 221-b. **Additional tax on investments in certain cases.** Upon every transfer of an investment, as defined in article fifteen of this chapter, taxable under this article, a tax is hereby imposed, in addition to the tax imposed by

section two hundred and twenty-one-a, of five per centum of the appraised inventory value of such investment, unless the tax on such investment as prescribed by article fifteen of this chapter or the tax on a secured debt as defined by former article fifteen of this chapter shall have been paid on such investment or secured debt and stamp affixed for a period including the date of the death of the decedent or unless the personal representatives of decedent are able to prove that a personal property tax was assessed and paid on such investment or secured debt during the period it was held by decedent; or unless the decedent was actually engaged in the bona fide purchase and sale of investments as a business, and at the time of his death had maintained an office or place of business in this state for the carrying on of the actual bona fide business of purchasing and selling investments, as distinguished from the purchase thereof for investment purposes, and had owned and held such investment for sale for the purpose of his business and not as investment for a period of not more than eight months prior to his death.

[Added by chap. 700, L. 1917.]

§ 221-c. **Exemption of certain personal property.** A transfer of pictures, statuary, works of art, antiques, books, manuscripts or other similar personal property shall be exempted from and not subject to the provisions of this article, if within two years after such transfer the person to whom such transfer is made shall present the same to the state, or to a municipal corporation of the state for educational, scientific, literary, library, or historical purposes; and if the tax thereon shall have been theretofore paid the amount thereof shall be refunded in accordance with the provisions of this article.

[Added by chap. 639, L. 1913.]

§ 222. **Accrual and payment of tax.** All taxes imposed by this article shall be due and payable at the time of the

transfer, except as herein otherwise provided. Taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof can not be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof. Such tax shall be paid to the state comptroller in a county in which the office of appraiser is salaried, and in other counties, to the county treasurer, and said state comptroller or county treasurer shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment as provided in section two hundred and thirty-six.

§ 223. **Discount and interest.** If such tax is paid within six months from the accrual thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accrual thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged; provided, however, that whenever the payment of any tax imposed by this article and payable to a county treasurer has been heretofore or shall be hereafter tendered, through inadvertence, to the state comptroller within the period of time before interest attaches to said tax, if such tax is paid in full to the treasurer of the proper county

within ten days thereafter, the county treasurer, when directed so to do by the state comptroller, may receipt in full for such tax without collecting any interest imposed thereon by this section of the tax law.

[As amended by chap. 128, L. 1917.]

**§ 224. Lien of tax and collection by executors, administrators and trustees.** Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the executors, administrators and trustees of every estate so transferred shall be personally liable for such tax until its payment. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such executor, administrator or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom and shall pay over the same to the state comptroller or county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien or charge on such real property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section two hundred and thirty-five of this chapter.

If any such legacy shall be given in money to any such person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

§ 225. **Refund of tax erroneously paid.** If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the surrogate having jurisdiction, on notice to the state comptroller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the state comptroller or county treasurer; or if such tax has been paid to such state comptroller or county treasurer, such officer shall refund out of the funds in his hands or custody to the credit of such taxes such equitable proportion of the tax, and credit himself with the same in the account required to be rendered by him under this article. If after the payment of any tax in pursuance of an order fixing such tax, made by the surrogate having jurisdiction, such order be modified or reversed by the surrogate having jurisdiction within two years from and after the date of entry of the order fixing the tax, or be modified or reversed at any time on an appeal taken therefrom within the time allowed by law on due notice to the state comptroller, the state comptroller shall, if such tax was paid in a county in which the office of appraiser is salaried, refund to the executor, administrator, trustee, person or persons

by whom such tax was paid, the amount of any moneys paid or deposited on account of such tax in excess of the amount of the tax fixed by the order modified or reversed, out of the funds in his hands or custody to the credit of such taxes, and to credit himself with the same in the account required to be rendered by him under this article, or if paid in a county in which the office of appraiser is not salaried, he shall by warrant direct and allow the county treasurer of the county to refund such amount in the same manner; but no application for such refund shall be made after one year from such reversal or modification, unless an appeal shall be taken therefrom, in which case no such application shall be made after one year from the final determination on such appeal or of an appeal taken therefrom, and the representatives of the estate, legatees, devisees or distributees entitled to any refund under this section shall not be entitled to any interest upon such refund, and the state comptroller shall deduct from the fees allowed by this article to the county treasurer the amount theretofore allowed him upon such overpayment. Where it shall be proved to the satisfaction of the surrogate that deductions for debts were allowed upon the appraisal since proved to have been erroneously allowed, it shall be lawful for such surrogate to enter an order assessing the tax upon the amount wrongfully or erroneously deducted. This section, as amended, shall apply to appeals and proceedings now pending and taxes heretofore paid in relation to which the period of one year from such reversal or modification has not expired when this section, as amended, takes effect.

[As amended by chap. 308, L. 1911.]

§ 226. **Taxes upon devises and bequests in lieu of commissions.** If a testator bequeaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an



amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this article.

§ 227. **Liability of certain corporations to tax.** If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state comptroller or the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or nonresident, or belonging to, or standing in the joint names of such decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state comptroller at least ten days prior to said delivery or transfer; nor shall any safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock

of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the state comptroller consents thereto in writing. And it shall be lawful for the said state comptroller, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of not less than five or more than twenty-five thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the state comptroller in any court of competent jurisdiction.

§ 228. **Jurisdiction of the surrogate.** The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this article, or to appoint a trustee of such

estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, and to do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogates' courts shall be entitled to exercise any such jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the code of civil procedure shall set forth the name of the state comptroller as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon the presentation thereof the surrogate shall issue a citation directed to the state comptroller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the state comptroller were a creditor of the decedent.

§ 229. **Appointment of appraisers, stenographers and clerks.** The state comptroller shall appoint and may at pleasure remove not to exceed six persons in the county of New York, four persons in the counties of Kings and Bronx, and one person in the counties of Albany, Dutchess, Erie, Monroe, Nassau, Niagara, Oneida, Onondaga, Orange, Queens, Rensselaer, Richmond, Suffolk, Chautauqua and Westchester, to act as appraisers therein. The state comptroller, from time to time and whenever in his

opinion it is necessary, may also appoint and at pleasure remove not to exceed two additional persons to act as transfer tax appraisers in the county of New York, to whom shall be referred the appraisal of delinquent estates pending before the transfer tax appraisers in New York county, where more than eighteen months have elapsed since the death of such decedents, respectively, and also to act as appraiser of other estates whenever it shall appear to the comptroller that the services of such additional appraiser is necessary. The appraisers so appointed shall receive an annual salary to be fixed by the state comptroller, together with their actual and necessary traveling expenses and witness fees, as hereinafter provided, payable monthly by the state comptroller out of any funds in his hands or custody on account of transfer tax. The salaries of each of the appraisers so appointed shall not exceed the following amounts: In New York county, four thousand dollars; in Kings, Bronx and Erie counties, four thousand dollars; in Albany, Queens and Westchester counties, three thousand dollars; in Onondaga county, two thousand five hundred dollars; in Nassau, Orange, Rensselaer and Suffolk counties, two thousand dollars; in Monroe and Oneida counties, one thousand five hundred dollars; in Chautauqua county, twelve hundred dollars; in Dutchess, Niagara and Richmond counties, one thousand dollars. Each of the said appraisers shall file with the state comptroller his oath of office and his official bond in the penal sum of not less than one thousand dollars, in the discretion of the state comptroller, conditioned for the faithful performance of his duties as such appraiser, which bond shall be approved by the attorney-general and the state comptroller. The state comptroller shall retain out of any funds in his hands on account of said tax the following amounts: First, a sum sufficient to provide the appraisers of New York

county with one managing clerk, at a salary not to exceed four thousand dollars a year, whose duties shall be prescribed by the state comptroller, nine stenographers, three clerks, one examiner of values, and one assistant examiner of values, whose salaries shall not exceed two thousand dollars a year each, and one junior clerk, whose salary shall not exceed six hundred dollars a year; the appraisers of Kings and Bronx counties, with four stenographers, whose salaries shall not exceed two thousand dollars a year each, one clerk, whose salary shall not exceed one thousand five hundred dollars a year, one page whose salary shall not exceed four hundred and eighty dollars a year, and the appraiser of Erie county with one clerk, whose salary shall not exceed fifteen hundred dollars a year, and the appraiser of Westchester county with one clerk, whose salary shall not exceed the sum of twelve hundred dollars a year, and the appraiser of Queens county with one clerk, whose salary shall not exceed the sum of fifteen hundred dollars a year, and the appraiser of Oneida county with one stenographer, whose salary shall not exceed the sum of nine hundred dollars a year, such employees to be appointed by the state comptroller. The state comptroller shall also retain out of any funds in his hands on account of said tax a sum sufficient to provide each of the additional transfer tax appraisers in New York county, whenever appointed as hereinbefore provided, with a stenographer, whose salary shall not exceed the rate of two thousand dollars a year, such employees to be appointed by the state comptroller. Second, a sum to be used in defraying the expenses for office rent, stationery, postage, process serving and other similar expenses necessarily incurred in the appraisal of estates, not exceeding fifteen thousand dollars a year in New York county, five thousand dollars a year in Kings

and Bronx counties and one thousand dollars a year in Erie and Queens counties.

[As amended by chap. 283, L. 1909; chap. 706, L. 1910; chap. 803, L. 1911; chap. 214, L. 1912; chap. 366, L. 1913; chap. 383, L. 1915; chaps. 80 and 549, L. 1916, and chap. 482, L. 1917.]

§ 230. **Proceedings by appraiser.** In each county in which the office of appraiser is not salaried the county treasurer shall act as appraiser. The surrogate, either upon his own motion, or upon the application of any interested person, including the state comptroller, shall by order direct the person or one of the persons appointed pursuant to section two hundred and twenty-nine of this article in counties in which the office of appraiser is salaried, and in other counties, the county treasurer, to fix the fair market value of property of persons whose estates shall be subject to the payment of any tax imposed by this article.

Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state comptroller, and to such persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall at such time and place appraise the same at its fair market value as herein prescribed; and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to said matter as the surrogate may order or require. Every appraiser, except in the counties in which the office of appraiser is salaried, for which provision is hereinbefore made, shall be paid

by the state comptroller and after the audit of said state comptroller, his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, payment to be made out of the funds in the hands of the county treasurer of the proper county on account of the tax imposed under the provisions of this article.

The value of every future or limited estate, income, interest or annuity for any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum.

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happenings of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall

be made in the manner provided by section two hundred and twenty-five of this article.

Where any property shall, after the passage of this chapter, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this article in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interest is derived

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred, and the surrogate shall enter a temporary order determining the amount of said tax in accordance with this provision; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this article, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article;



and the executor or trustee of each estate, or the legal representative having charge of the trust fund, shall immediately upon the happening of said contingencies or conditions apply to the surrogate of the proper county, upon the verified petition setting forth all the facts, and giving at least ten days' notice by mail to all interested persons or corporations, for an order modifying the temporary taxing order of said surrogate so as to provide for the final assessment and determination of the tax in accordance with the ultimate transfer or devolution of said property. Such return of overpayment shall be made in the manner provided by section two hundred and twenty-five of this article.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the surrogate and the other in the office of the state comptroller.

[As amended by chap. 800; L. 1911; chap. 550, L. 1916.]

**§ 231. Determination of surrogate.** From such report of appraisal and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course, determine the cash value of all estates and the

amount of tax to which the same are liable; or the surrogate may so determine the cash value of all such estates and the amount of tax to which the same are liable, without appointing an appraiser.

The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or contingent estates, income or interest therein limited for the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, to all persons known to be interested therein, and shall immediately forward a copy of such taxing order to the state comptroller. The surrogate shall also forward to the state comptroller copies of all orders entered by him in relation to or affecting in any way the transfer tax on any estate, including orders of exemption.

If, however, it appear at any stage of the proceedings that any of such persons known to be interested in the estate is an infant or an incompetent, the surrogate may, if the interest of such infant or incompetent is presently involved and is adverse to that of any of the other persons interested therein, appoint a special guardian of such infant; but nothing in this provision shall affect the right of an infant over fourteen years of age or of any one on behalf of an infant under fourteen years of age to nominate and apply for the appointment of a special guardian for such infant at any stage of the proceedings.

[As amended by chap. 550, L. 1916.]

§ 232. **Appeal and other proceedings.** The state comptroller or any person dissatisfied with the appraisement

or assessment and determination of tax may appeal therefrom to the surrogate within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the appeal is taken; but no costs shall be allowed by the surrogate on such appeal.

Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the state comptroller may, if he believes that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to a justice of the supreme court of the judicial district embracing the surrogate's court in which the order or decree has been filed, for a reappraisal thereof. The justice to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers and be subject to the duties of an appraiser under section two hundred and thirty and shall receive compensation at the rate of five dollars per day for every day actually and necessarily employed in such appraisal. Such compensation shall be payable by the state comptroller or county treasurer out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such justice as are herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surrogate, and shall be filed by such justice in the office of the state comptroller, and a certified copy thereof transmitted to the surrogate's court of the proper county.

**§ 233. Composition of transfer tax upon certain estates.**

The state comptroller, by and with the consent of the attorney-general expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced, that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under the provisions of chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five; chapter three hundred and ninety-nine of the laws of eighteen hundred and ninety-two, or chapter nine hundred and eight of the laws of eighteen hundred and ninety-six, and the several acts amendatory thereof and supplemental thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of said trustees as against the interest of such *cestuis que trust* as may possess either present right of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy filed in the office of the state comptroller, one copy in the office of the surrogate of the county in which the tax was paid, and one copy delivered to the executors, administrators or trustees who shall be parties thereto.

**§ 234. Surrogate's assistants in New York, Kings and other counties.** The state comptroller may, upon the

recommendation of the surrogate, appoint, and may at pleasure remove, assistants and clerks in the surrogate's offices of the following counties, at annual salaries to be fixed by him not to exceed the amounts hereinafter specified:

1. In New York county, a transfer tax assistant, five thousand dollars; a transfer tax clerk, two thousand and four hundred dollars; an assistant clerk, eighteen hundred dollars; a recording clerk, thirteen hundred dollars; a stenographer, twelve hundred dollars; and shall be entitled to expend not more than seven hundred and fifty dollars a year in such office for expenses necessarily incurred in the assessment and collection of taxes under this article.

2. In Kings county, a transfer tax assistant, four thousand dollars; a deputy transfer tax assistant, three thousand dollars; three transfer tax clerks, one at a salary of two thousand dollars, one at a salary of fifteen hundred dollars and one at a salary of one thousand dollars; and shall be entitled to expend not more than five hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article. The assistant clerk now in office shall continue in office as transfer tax clerk at the salary of fifteen hundred dollars.

3. In Erie county, a transfer tax clerk, eighteen hundred dollars.

4. In Westchester county, a transfer tax assistant, two thousand five hundred dollars.

5. In Albany county, a transfer tax clerk, fifteen hundred dollars.

6. In Queens county, transfer tax clerk, fifteen hundred dollars.

7. In Onondaga county, a transfer tax clerk, fifteen hundred dollars; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily

**incurred in the assessment and collection of taxes under this article.**

8. In Monroe county, two transfer tax clerks, one thousand dollars each; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

9. In Dutchess county, a transfer tax clerk, nine hundred dollars.

10. In Oneida county, not more than two transfer tax clerks, twelve hundred dollars in the aggregate.

11. In Suffolk county, a transfer tax clerk, one thousand dollars.

12. In Ulster county, a transfer tax clerk, seven hundred and twenty dollars.

13. In Richmond county, a transfer tax clerk, one thousand dollars.

14. In Nassau county, a transfer tax clerk, twelve hundred dollars.

15. In Bronx county, a transfer tax assistant, two thousand dollars.

Such salaries and expenses shall be paid monthly by the state comptroller, upon proper vouchers, out of any funds in his hands on account of taxes collected under this article.

[As amended by chap. 70, L. 1910; chaps. 160, 681, 744, L. 1910; chap. 45, L. 1912; chap. 429, L. 1913; chaps. 562, 582, L. 1916, and chap. 194, L. 1917.]

§ 235. **Proceedings by district attorneys.** If, after the expiration of eighteen months from the accrual of any tax under this article, such tax shall remain due and unpaid, after the refusal or neglect of the persons liable therefor to pay the same, the state comptroller shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney shall apply to the

surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The surrogate, upon such application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the code of civil procedure for the service of citations out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon request of the district attorney or the state comptroller, furnish, without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree after the collection and payment of the tax to the state comptroller or county treasurer may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum of one hundred dollars, or where there has been a contest, the sum of two hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state comptroller, after the same shall have been audited by him, shall pay all expenses incurred for the service of citations and other lawful disbursements not otherwise paid, from funds in his hands on

account of such tax, or in a county in which the office of appraiser is not salaried, by a warrant upon the county treasurer of such county for the payment by him of the same from funds in his hands on account of such tax. In proceedings to which the state comptroller is cited as a party under sections two hundred and twenty-eight and two hundred and thirty of this article, he is authorized to designate and retain counsel to represent him and to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax in any case in a county where the office of appraiser is salaried, and in any other county the state comptroller shall by warrant direct the county treasurer to pay such expenses out of any funds which may be in his hands on account of this tax; provided, however, that in the collection of taxes upon estates of non-resident decedents the state comptroller shall not allow for legal services up to and including the entry of the order of the surrogate fixing the tax a sum exceeding ten per centum of the taxes and penalties collected.

**§ 236. Receipts from county treasurer or comptroller.** One of the duplicate receipts issued for the payment of any tax under this article, as provided by section two hundred and twenty-two, shall be countersigned by the state treasurer if the same was issued by the state comptroller, and by the state comptroller if issued by any county treasurer. The officer so countersigning the same shall charge the officer receiving the tax with the amount thereof and affix the seal of his office to the same and return to the proper person; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this article unless he shall produce a receipt so sealed and countersigned, or a certified copy thereof.



Any person shall, upon the payment of fifty cents to the officer issuing such receipt, be entitled to a duplicate thereof, to be signed, sealed and countersigned in the same manner as the original.

Any person shall, upon the payment of fifty cents, be entitled to a certificate of the state comptroller that the tax upon the transfer of any real estate of which any decedent died seized has been paid, such certificate to designate the real property upon which such tax is paid, the name of the person so paying the same, and whether in full of such tax. Such certificate may be recorded in the office of the county clerk or register of the county where such real property is situate, in a book to be kept by him for that purpose, which shall be labeled "transfer tax."

§ 237. **Fees of county treasurer.** The treasurer of each county in which the office of appraiser is not salaried shall be allowed to retain, on all taxes paid and accounted for by him each fiscal year under this article, five per centum on the first fifty thousand dollars, two and one-half per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers.

§ 238. **Books and forms to be furnished by the state comptroller.** The state comptroller shall furnish to each surrogate a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places of residence and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such

decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of annuities, life estates, terms of years, and other property of any such decedent or given by him in his will or otherwise, as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this article filed with him. The state comptroller shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book.

§ 239. **Reports of surrogate and county clerk.** Each surrogate shall, on January, April, July and October first of each year, make a report, upon the forms furnished by the comptroller containing all the data and matters required to be entered in such book, which shall be immediately forwarded to the state comptroller. The county clerk of each county, except in the counties where the registers perform the duties of the county clerk with respect to the recording of deeds, and when in such counties the registers, shall, at the same times, make reports containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property

transferred, which shall be immediately forwarded to the state comptroller.

§ 240. **Reports of county treasurer.** Each county treasurer in a county in which the office of appraiser is not salaried shall make a report, under oath, to the state comptroller, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state comptroller. He shall, at the same time, pay the state treasurer all taxes received by him under this article and not previously paid into the state treasury, except as provided in the next section, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum.

[As amended by chap. 800, L. 1911.]

§ 241. **Report of state comptroller, payment of taxes; refunds in certain cases.** The state comptroller shall deposit all taxes collected by him under this article, except as hereinafter otherwise provided, in a responsible bank, banking house or trust company in the city of Albany, which shall pay the highest rate of interest to the state for such deposit, to the credit of the state comptroller on account of the transfer tax. And every such bank, banking house or trust company shall execute and file in his office an undertaking to the state, in the sum, and with such sureties, as are required and approved by the comptroller, for the safe keeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank, banking house or trust company, with interest thereon on daily balances at such rate as the comptroller may fix. Every such undertaking shall have indorsed thereon, or annexed thereto, the approval of the

attorney-general as to its form. The state comptroller shall on the first day of each month make a verified return to the state treasurer of all taxes received by him under this article, stating for what estate, and by whom and when paid; and shall credit himself with all expenditures made since his last previous return on account of such taxes, for salary, refunds or other purposes lawfully chargeable thereto. He shall on or before the tenth day of each month pay to the state treasurer the balance of such taxes remaining in his hands at the close of business on the last day of the previous month, as appears from such returns.

Whenever the tax on a contingent remainder has been determined at the highest rate which on the happening of any of said contingencies or conditions would be possible under the provisions of this article, the state comptroller, in the counties wherein this tax is payable direct to him, and in all other counties the treasurer of said counties, respectively, when such tax is paid shall retain and hold to the credit of said estate so much of the tax assessed upon such contingent remainders as represents the difference between the tax at the highest rate and the tax upon such remainders which would be due if the contingencies or conditions had happened at the date of the appraisal of said estate, and the state comptroller or the county treasurer shall deposit the amount of tax so retained in some solvent trust company or trust companies or savings banks in this state, to the credit of such estate, paying the interest thereon when collected by him to the executor or trustee of said estate, to be applied by said executor or trustee as provided by the decedent's will. Upon the happening of the contingencies or conditions whereby the remainder ultimately vests in possession, if the remainder then passes to persons taxable at the highest rate, the state comptroller or the county treasurer

shall turn over the amount so retained by him to the state treasurer as provided herein and by section two hundred and forty of this article, or if the remainder ultimately vests in persons taxable at a lower rate or a person or corporation exempt from taxation by the provisions of this article, the state comptroller or the county treasurer shall refund any excess of tax so held by him to the executor or trustee of the estate, to be disposed of by said executor or trustee as provided by the decedent's will. Executors or trustees of any estate may elect to assign to and deposit with the state comptroller or the county treasurer, bonds or other securities of the estate approved by the state comptroller, or the county treasurer, both as to the form of the collateral and the amount thereof, for the purpose of securing the payment of the difference between the tax on said remainder at the highest rate and the tax upon said remainder which would be due if the contingencies or conditions had happened at the date of the appraisal of said estate, and cash for the balance of said tax as assessed, which said bonds or other securities shall be held by the state comptroller, or the county treasurer, to the credit of said estate until the actual vesting of said remainders, the income therefrom when received by the state comptroller or the county treasurer to be paid over to the executor or trustee during the continuance of the trust estates and then to be finally disposed of in accordance with the ultimate transfer or devolution of said remainders as hereinbefore provided; and it shall be the duty of the executors or trustees of such estates to forthwith notify the state comptroller of the actual vesting of all such contingent remainders.

If any executor or trustee shall have deposited with the state comptroller, or the county treasurer, cash or securities, or both cash and securities, to an amount in excess of the sum necessary to pay the transfer tax upon such con-

tingent remainders at the highest rate as aforesaid, the excess of tax so deposited shall be returned to the executor or trustee, or if any executor or trustee shall have deposited with the state comptroller, or the county treasurer, cash or securities, or both cash and securities, to an amount less than is sufficient to pay the tax upon such contingent remainders as finally assessed and determined, the executor or trustee of said estate shall forthwith, upon the entry of the order determining the correct amount of tax due, pay to the state comptroller, or the county treasurer, whichever is entitled under the provisions of this article to receive the tax, the balance due on account of said tax.

[As amended by chap. 800, L. 1910.]

§ 242. **Application of taxes.** All taxes levied and collected under this article when paid into the treasury of the state shall be applicable to the expenses of the state government and to such other purposes as the legislature shall by law direct.

§ 243. **Definitions.** The words “estate” and “property,” as used in this article, shall be taken to mean the property or interest therein passing or transferred to individuals or corporate legatees, devisees, heirs, next of kin, grantees, donees or vendees, and not as the property or interest therein of the decedent, grantor, donor, or vendor and shall include all property or interest therein, whether situated within or without the state. [The words “tangible property” as used in this article shall be taken to mean corporeal property such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in bank, shares of stock, bonds, notes, credits or evidences of an interest in property and evidences of debt. The words “intangible property” as used in this article shall be taken to mean incorporeal property, including

money, deposits in bank, shares of stock, bonds, notes, credits, evidences of an interest in property and evidences of debt.] The word "transfer" as used in this article shall be taken to include the passing of property or any interest therein in the possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words "county treasurer" and "district attorney," as used in this article, shall be taken to mean the treasurer or the district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-eight of this article. The words "the intestate laws of this state," as used in this article, shall be taken to refer to all transfers of property, or any beneficial interest therein, effected by the statute of descent and distribution and the transfer of any property, or any beneficial interest therein, effected by operation of law upon the death of a person omitting to make a valid disposition thereof, including a husband's right as tenant by the curtesy or the right of a husband to succeed to the personal property of his wife who dies intestate leaving no descendants her surviving. For any and all purposes of this article and for the just imposition of the transfer tax, every person shall be deemed to have died a resident and not a nonresident, of the state of New York, if and when such person shall have dwelt or shall have lodged in this state during and for the greater part of any period of twelve consecutive months in the twenty-four months next preceding his or her death; and also if and when by formal written instrument executed within one year prior to his or her death or by last will he or she shall have declared himself or herself to be a resident or a citizen of this state, notwithstanding that from time to time during such twenty-four months such person may have sojourned outside of this state and whether or not such person may or may not have voted or have been

entitled to vote or have been assessed for taxes in this state; and also if and when such person shall have been a citizen of New York sojourning outside of this state. The burden of proof in a transfer tax proceeding shall be upon those claiming exemption by reason of the alleged nonresidence of the deceased. The wife of any person who would be deemed a resident under this section shall also be deemed a resident and her estate subject to the payment of a transfer tax as herein provided, unless said wife has a domicile separate from him.

[As amended by chap. 706, L. 1910; chap. 732, L. 1911; chap. 551, L. 1916, and ch. 626, L. 1919.]

§ 244. **Exemptions in article one not applicable.** The exemptions enumerated in section four of this chapter shall not be construed as being applicable in any manner to the provisions of this article.

§ 245. **Limitation of time.** The provisions of the code of civil procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law, provided, however, that as to real estate in the hands of *bona fide* purchasers, the transfer tax shall be presumed to be paid and cease to be a lien as against such purchasers after the expiration of six years from the date of accrual.



---

---

# APPENDIX

## INCLUDING :

List of State Inheritance Tax Officials, with addresses.

List of Corporations, and where incorporated in States that tax nonresident transfers of stock.

List of Corporations, and where incorporated in States that do not tax nonresident transfers of stock.

New York Inheritance Tax Forms.

Statutes of all the States with many of their Forms.

General Index.

Special Index for United States Statute.



LIST OF  
**STATE INHERITANCE TAX OFFICIALS**  
WITH ADDRESSES

---

Following is a list of the official or department in the several States to whom inquiries should be addressed by nonresident attorneys for information as to the taxation of nonresident transfers, blank forms, etc.:

*Arkansas*.—Henry S. Yocum, Inheritance Tax Attorney, Little Rock, Arkansas.

*Arizona*.—Hon. D. F. Johnson, State Treasurer, Phoenix, Arizona.

*California*.—Hon. John S. Chambers, Comptroller, Attention Inheritance Tax Department, Sacramento, Cal.

*Colorado*.—Attorney General, Inheritance Tax Department, Denver, Colo.

*Connecticut*.—Hon. Wm. H. Corbin, Tax Commissioner, Hartford, Conn.

*Delaware*.—Register of Wills of New Castle County, Wilmington, Del.

*Georgia*.—Hon. Clifford Walker, Attorney General, State Capitol, Atlanta, Ga.

*Idaho*.—Hon. Roy L. Black, Attorney General, Boise, Idaho.

*Illinois*.—Hon. Edward J. Brundage, Attorney General, Springfield, Ill.

*Indiana*.—State Board of Tax Commissioners, State House, Indianapolis, Ind.

*Iowa*.—Hon. E. W. Hoyt, State Treasurer, Des Moines, Iowa.

*Kansas*.—State Tax Commission, Topeka, Kan.

*Kentucky*.—Hon. Robert L. Greene, Auditor, Frankfort, Ky.

*Louisiana*.—Hon. Edward H. Rightor, Esq., Hennen Bldg., New Orleans, for Parish of New Orleans. For other parishes, District Attorney of Parish.

*Maine*.—Attorney General, Office, Augusta, Me.

*Maryland*.—Hon. Albert C. Ritchie, Attorney General, Title Bldg., Baltimore, Md.

*Massachusetts*.—State Tax Commissioner, State House, Boston, Mass.

*Michigan*.—Hon. O. B. Fuller, Auditor General, Lansing, Mich.

*Minnesota*.—Hon. Clifford L. Hilton, Attorney General, St. Paul, Minn.

*Missouri*.—Hon. Frank McAllister, Jefferson City, Mo.

*Montana*.—Hon. H. L. Hart, State Treasurer, Helena, Mont.

*Nebraska*.—Legal Department, State of Nebraska, Lincoln, Neb.

*Nevada*.—Hon. Geo. A. Cole, State Comptroller, Carson City, Nev.

*New Hampshire*.—Hon. Joseph S. Mathews, Assistant Attorney General, Concord, New Hampshire.

*New Jersey*.—Comptroller of the Treasury, State House, Trenton, N. J.

*New York*.—Hon. Eugene M. Travis, State Comptroller, Capitol, Albany, N. Y.

*North Carolina*.—Corporation Commission, Raleigh, N. C.

*North Dakota*.—Tax Commission, Bismarck, N. Dak.

*Ohio*.—State Tax Commission, Columbus, Ohio.

*Oklahoma*.—Hon. F. C. Carter, State Auditor.

- Oregon*.—Hon. O. P. Hoff, State Treasurer, Attention Inheritance Tax Department, Salem, Oregon.
- Pennsylvania*.—Hon. Chas. A. Snyder, Auditor General, Harrisburg, Pa.
- Rhode Island*.—Board of Tax Commissioners, State House, Providence, R. I.
- South Dakota*.—Hon. H. C. Preston, Tax Commission, Pierre, S. Dak.
- Tennessee*.—Hon. John B. Thompson, Comptroller, Nashville, Tenn.
- Texas*.—Hon. H. B. Terrell, Comptroller, Austin, Texas.
- Utah*.—Hon. D. B. Shields, Attorney General, Salt Lake City, Utah.
- Vermont*.—Hon. Chas. A. Plumley, Commissioner of Taxes, Northfield, Vt.
- Virginia*.—Hon. V. Lee Moore, Auditor Public Accounts, Richmond, Va.
- Washington*.—State Board of Tax Commissioners, Olympia, Wash.
- West Virginia*.—Hon. W. S. Hallanan, State Tax Commissioner, Charleston, W. Va.
- Wisconsin*.—Wisconsin Tax Commission, Madison, Wis.
- Wyoming*.—Hon. W. L. Walls, Attorney General, Cheyenne, Wyo.



# LIST OF CORPORATIONS

---

Following is a list of corporations and joint stock companies formed or incorporated under the laws of States that taxed transfers of their stock in the estates of nonresidents prior to 1917.

As to estates of persons dying after April 7, 1917, corporations organized in the State of Maine should be included.

As to estates of persons dying after May 14, 1919, the State of New York should be included.

As to estates of persons dying after July, 1919, the State of Pennsylvania should be included.

Since the enactment of Chapter 283, L. 1919, the State of Connecticut should be included, if the decedent was domiciled in a State that taxes such transfers. Tennessee has a similar reciprocal provision.

Name of Company.	State where Corporation organized.
Adventure Consolidated Copper Co. ....	Mich.
Algomah Mining Co. ....	Mich.
Allis-Chalmers Co. ....	N. J.
Allouez Mining Co. ....	Mich.
Amalgamated Copper Co. ....	N. J.
American Beet Sugar Co. ....	N. J.
American Brake Shoe & Foundry Co. ....	N. J.
American Can Co. ....	N. J.
American Car & Foundry Co. ....	N. J.
American Cotton Oil Co. (The) ....	N. J.
American Hide & Leather Co. ....	N. J.
American Ice Securities Co. ....	N. J.
American Light & Traction Co. ....	N. J.

Name of Company.	State where Corporation organized.
American Linseed Co. ....	N. J.
American Malt Corp. ....	N. J.
American Radiator Co. ....	N. J.
American Sewer Pipe Co. ....	N. J.
American Shipbuilding Co. ....	N. J.
American Smelters Securities Co. ....	N. J.
American Smelting & Refining Co. ....	N. J.
American Snuff Co. ....	N. J.
American Steel Foundries Co. ....	N. J.
American Sugar Refining Co. (The) ....	N. J.
American Tobacco Co. (The) ....	N. J.
American Type Founders Co. ....	N. J.
American Woolen Co. ....	N. J.
American Writing Paper Co. ....	N. J.
Anaconda Copper Mining Co. ....	Mont.
Ann Arbor Railroad Co. ....	Mich.
Arnold Mining Co. ....	Mich.
Associated Oil Co. ....	Cal.
Atlantic Mining Co. ....	Mich.
Atchison, Topeka & Santa Fe Railway Co. (The) ....	Kan.
Bethlehem Steel Corp. ....	N. J.
Bonanza Development Co. ....	Colo.
Butte-Ballaklava Copper Co. ....	Ariz.
Butte Coalition Mining Co. ....	N. J.
Calumet & Arizona Mining Co. ....	Ariz.
Calumet & Hecla Mining Co. ....	Mich.
Centennial Copper Mining Co. ....	Mich.
Central Coal & Coke Co. ....	Mo.
Central of Georgia Railway Co. ....	Ga.
Central Leather Co. ....	N. J.
Central Pacific Railway Co. ....	Utah
Central Railroad of New Jersey ....	N. J.
Chicago & Alton Railroad Co. ....	Ill.
Chicago & Eastern Illinois Railroad Co. ....	Ill.



Name of Company.	State where Corporation organized.
Chicago & Northwestern Railway Co. ....	Ill., Wis., Mich.
Chicago, Burlington & Quincy Railroad Co. ....	Ill.
Chicago Great Western Railroad Co. ....	Ill.
Chicago Junction Railways & Union Stock Yards Co. (The).....	N. J.
Chicago, Milwaukee & St. Paul Railway Co. ....	Wis.
Chicago Pneumatic Tool Co. ....	N. J.
Chicago Railways Co. ....	Ill.
Chicago, St. Paul, Minneapolis & Omaha Railway Co..	Wis.
Chicago Subway Co. ....	N. J.
Chicago Telephone Co. ....	Ill.
Cincinnati, Hamilton & Dayton Railway Co. (The)....	Ohio
Cleveland, Cincinnati, Chicago & St. Louis Railway...	Ohio
Colorado Fuel & Iron Co. (The).....	Colo.
Colorado & Southern Railway Co. (The).....	Colo.
Columbus & Hocking Coal & Iron Co.....	Ohio
Commonwealth Edison Co. ....	Ill.
Consolidated Mercur Gold Mines Co. ....	N. J.
Crucible Steel Co. of America.....	N. J.
Cuban-American Sugar Co. (The).....	N. J.
Cumberland Telegraph and Telephone Co. ....	Ky.
Daly West Mining Co. ....	Colo.
Denver & Rio Grande Railroad Co. ....	Colo., Utah
Detroit United Railway Co. ....	Mich.
Diamond Match Co. (The).....	Ill.
Distillers Securities Corp. ....	N. J.
Duluth, South Shore & Atlantic Railway Co....	Mich., Wis.
Du Pont (E. I.) De Nemours Powder Co. ....	N. J.
East Butte Copper Mining Co. (The).....	Ariz.
Eastman Kodak Co. ....	N. J.
Electric Storage Battery Co. (The).....	N. J.
Elgin National Watch Co. ....	Ill.
Franklin Mining Co. ....	Mich.
General Asphalt Co. ....	N. J.
General Motors Co. ....	N. J.

Name of Company.	State where Corporation organized.
Goldfield Consolidated Mines Co. (The).....	Wyo.
Great Northern Iron Ore Properties.....	Minn.
Great Northern Railway Co. ....	Minn.
Greene Cananea Copper Co. ....	Minn.
Hancock Consolidated Mining Co. ....	Mich.
Havana Electric Railway Co. ....	N. J.
Helvitia Copper Co. (The).....	Ariz.
Hocking Valley R. R. Co. ....	Ohio
Illinois Brick Co. ....	Ill.
Illinois Central Railroad Co. ....	Ill.
Indiana Mining Co. ....	Mich.
Ingersoll-Rand Co. ....	N. J.
International and Great Northern R. R. Co. ....	Texas
International Harvester Co. ....	N. J.
International Mercantile Marine Co. ....	N. J.
International Nickel Co. ....	N. J.
International Power Co. ....	N. J.
International Smelting & Refining Co. ....	N. J.
International Steam Pump Co. ....	N. J.
Iowa Central Railway Co. ....	Ill.
Isle Royale Copper Co. ....	N. J.
Kansas City Railway & Light Co. ....	N. J.
Kansas City, Fort Scott & Memphis Ry. Co. (The)....	Kan.
Kansas City, Mexico & Orient Railway Co. (The)....	Kan.
Kansas City Southern Railway Co. (The).....	Mo.
Keweenaw Copper Co. ....	Mich.
Laclede Gas Light Co. (The).....	Mo.
Lake Copper Co. ....	Mich.
Lake Erie & Western Railroad Co. ....	Ill.
Lake Shore & Mich. Southern Railway Co. .	Ohio, Ill., Mich.
Lake Superior Corp. (The).....	N. J.
La Salle Copper Co. ....	Mich.
Louisville & Nashville R. R. Co. ....	Ky.
Mayflower Mining Co. ....	Mich.

Name of Company.	State where Corporation organized.
Metropolitan West Side Elevated Railway Co. (The) . . .	Ill.
Michigan Central Railroad Co. . . . .	Mich.
Michigan Copper Mining Co. . . . .	Mich.
Michigan State Telephone Co. . . . .	Mich.
Minneapolis & St. Louis Railroad Co. . . . .	Minn., Ia.
Minneapolis General Electric (The) . . . . .	N. J.
Minneapolis, St. Paul & Sault Ste. Marie Railway Co.	
	Minn., Wis. & Mich.
Missouri, Kansas & Texas Railway Co. . . . .	Kan.
Missouri Pacific Railway Co. (The) . . . . .	Mo., Neb.,* Kan.
Mohawk Mining Co. . . . .	Mich.
Nashville, Chattanooga & St. Louis Railway Co. . . . .	Tenn.
National Biscuit Co. . . . .	N. J.
National Carbon Co. . . . .	N. J.
National Enameling & Stamping Co. . . . .	N. J.
National Lead Co. . . . .	N. J.
New Arcadian Copper Co. . . . .	Mich.
New York Air Brake Co. (The) . . . . .	N. J.
New York Central . . . . .	N. Y., Pa., O., Ind., Ill. & Mich.
North American Co. (The) . . . . .	N. J.
North Butte Mining Co. . . . .	Minn.
North Lake Mining Co. . . . .	Mich.
Northern Pacific Railway Co. . . . .	Wis.
Northern Securities Co. . . . .	N. J.
Ojibway Mining Co. . . . .	Mich.
Old Colony Copper Co. . . . .	Mich.
Osceola Consolidated Mining Co. . . . .	Mich.
Otis Elevator Co. . . . .	N. J.
Pacific Coast Co. (The) . . . . .	N. J.
Pacific Telephone & Telegraph Co. (The) . . . . .	Cal.
Parrot Silver & Copper Co. . . . .	Mont.
Pennsylvania Steel Co. . . . .	N. J.
People's Gas Light & Coke Co. . . . .	Ill.

---

\* Virginia and Nebraska do not tax stock transfers of nonresidents.

Name of Company.	State where Corporation organized.
Peoria & Eastern Railway Co. ....	Ill.
Pere Marquette Railroad Co. ....	Mich.
Philadelphia Electric Co. ....	N. J.
Pittsburgh, Cincinnati, Chicago & St. Louis Railway, Ohio, Wa. Va.,* Ill.	
Pittsburgh Coal Co. ....	N. J.
Pittsburgh, Fort Wayne & Chicago Railway Co. ....	Ohio, Ill.
Pressed Steel Car Co. ....	N. J.
Pullman Co. (The) ....	Ill.
Quincy Mining Co. ....	Mich.
Railway Steel-Spring Co. ....	N. J.
Republic Iron & Steel Co. ....	N. J.
Rock Island Co. (The) ....	N. J.
St. Joseph & Grand Island Railway Co. (The) ..	Neb.,* Kan.
St. Louis & San Francisco Railroad Co. ....	Mo.
St. Louis Southwestern Railway Co. ....	Mo.
St. Mary's Mineral Land Co. ....	N. J.
San Pedro, Los Angeles & Salt Lake Railroad Co. ....	Utah
Santa Fe Gold & Copper Mining Co. ....	N. J.
Savannah Electric Co. ....	Ga.
Shattuck Arizona Copper Co. ....	Minn.
Sloss Sheffield Steel & Iron Co. ....	N. J.
Southern Pacific Co. ....	Ky.
Southern Railway Co. ....	Va.
Standard Oil Co. ....	N. J.
Superior & Boston Copper Co. ....	Ariz.
Superior & Pittsburgh Copper Co. ....	Minn.
Superior Copper Co. ....	Mich.
Swift & Co. ....	Ill.
Tamarack Mining Co. ....	Mich.
Tennessee Coal, Iron & Railroad Co. ....	Tenn.
Tennessee Copper Co. ....	N. J.
Texas Co. ....	Texas

---

\* Virginia and Nebraska do not tax stock transfers of nonresidents.

Name of Company.	State where Corporation organized.
Texas Pacific Land Trust.....	Texas
Toledo Railways & Light Co. ....	Ohio
Twin City Rapid Transit Co. ....	N. J.
Union Bag and Paper Co. ....	N. J.
Union Pacific Railroad Co. ....	Utah
United Boxboard Co. ....	N. J.
United Fruit Co. ....	N. J.
United Railways Investment Co. ....	N. J.
United Shoe Machinery Corp. ....	N. J.
United States Cast Iron Pipe & Foundry Co. ....	N. J.
United States Realty & Improvement Co. ....	N. J.
United States Reduction & Refining Co. ....	N. J.
United States Rubber Co. ....	N. J.
United States Steel Corp. ....	N. J.
Utah Consolidated Mining Co. ....	N. J.
Utah Copper Co. ....	N. J.
Vandalia Railroad Co. ....	Ill.
Victoria Copper Mining Co. ....	Mich.
Virginia-Carolina Chemical Co. ....	N. J.
Wabash Pittsburgh Terminal Railway Co. (The)...	W. Va., Ohio
Wabash Railroad Co. ....	Ill., Mich., Mo., Ohio
Wells Fargo & Co. ....	Colo.
Western Electric Co. ....	Ill.
Western Telephone & Telegraph Co. ....	N. J.
Wheeling & Lake Erie Railroad Co. ....	Ohio
Winona Copper Co. ....	Mich.
Wisconsin Central Railway Co. ....	Wis.
Wolverine Copper Mining Co. ....	Mich.
Wyandot Copper Co. ....	Mich.



# WHERE SUCH TRANSFERS ARE NOT TAXED

---

Following is a list of corporations and joint stock companies formed or incorporated in States that did not tax transfers of stock in domestic corporations prior to April 7, 1911.

As to estates of persons dying after that date the State of Maine should be excluded.

As to estates of persons dying after May 14, 1919, the State of New York should be excluded.

As to estates of persons dying after July, 1919, the State of Pennsylvania should be excluded.

Since the enactment of Chapter 283, L. 1919, the State of Connecticut should be excluded, if the decedent was domiciled in a State that taxes such transfers. Tennessee and New Mexico have a similar reciprocal provision.

The only jurisdictions which do not now tax transfers of stock in domestic corporations owned by nonresident decedents are now:

Alaska, Alabama, Delaware, District of Columbia, Florida; Indiana, Maryland, Massachusetts, Mississippi, Nebraska, New Hampshire, Rhode Island, South Carolina, Virginia and Vermont.

Name of Company.	State where Corporation organized.
Adams Express Co. ....	N. Y.
American Agricultural Chemical Co. (The).....	Conn.
American Express Co. ....	N. Y.
American Locomotive Co. ....	N. Y.
American Pneumatic Service Co. ....	Del.

Name of Company.	State where Corporation organized.
American Telephone & Telegraph Co. ....	N. Y.
American Zinc, Lead & Smelting Co. ....	Me.
Amoskeag Manufacturing Co. ....	N. H.
Arizona Commercial Copper Co. ....	Me.
Associated Merchants Co. ....	Conn.
Atlantic Coast Line. ....	Va.
Atlantic, Gulf & West Indies Steamship Lines. ....	Me.
Baltimore & Ohio R. R. Co. (The) ....	Va. & Md.
Batopilas Mining Co. (The) ....	N. Y.
Boston & Albany Railroad Co. ....	Mass., N. Y.
Boston & Corbin Copper & Silver Mining Co. ....	Me.
Boston & Lowell Railroad Co. ....	Mass.
Boston & Maine Railroad Co. ....	Mass., N. H., Me.
Boston & Northern Street Railway Co. ....	Mass.
Boston & Providence Railroad Corp. ....	Mass.
Boston Elevated Railway Co. ....	Mass.
Boston, Revere Beach & Lynn Railroad Co. ....	Mass.
Brill (J. G.) Co. (The) ....	Pa.
Brooklyn Rapid Transit Co. ....	N. Y.
Brooklyn Union Gas Co. (The) ....	N. Y.
Buffalo, Rochester & Pittsburgh Railway Co. ....	N. Y., Pa.
Butterick Co. (The) ....	N. Y.
Cambria Steel Co. ....	Pa.
Capital Traction Co. (The) ....	Dist. of Columbia
Central & South American Telegraph Co. ....	N. Y.
Central Vermont Railway Co. ....	Vt.
Chesapeake & Ohio R. R. Co. (The) ....	Va. & Md.
Concord & Montreal Railroad Co. (B. & M.) ....	N. H.
(B. & M.) ....	Vt.
Connecticut River Railroad Co. (B. & M.) ....	Mass., N. H.
Consolidated Coal Co. (The) ....	Md.
Consolidated Gas Co. ....	N. Y.
Cramp & Sons Ship & Engine Building Co. (The Wm.) . .	Pa.
Crex Carpet Co. ....	Del.



Name of Company.	State where Corporation organized.
Delaware & Hudson Co. (The) .....	N. Y.
Delaware, Lackawanna & Western Railroad Co. (The) ..	Pa.
Draper Co. ....	Me.
Duluth-Superior Traction Co. (The) .....	Conn.
East Boston Co. ....	Mass.
Eastern Steamship Co. ....	Me.
Edison Electric Illuminating Co. (The) .....	Mass.
Erie Railroad Co. ....	N. Y.
Federal Mining & Smelting Co. ....	Del.
Fitchburg Railroad Co. ....	Mass., N. H., Vt. & N. Y.
Galveston-Houston Electric Co. ....	Me.
General Chemical Co. ....	N. Y.
General Electric Co. ....	N. Y.
Giroux Consolidated Mines Co. ....	Del.
Independent Brewing Co. ....	Pa.
Inspiration Copper Co. ....	Me.
Interborough-Metropolitan Co. ....	N. Y.
Interborough Rapid Transit Co. ....	N. Y.
International Buttonhole Machine Co. ....	Me.
International Paper Co. ....	N. Y.
Island Creek Coal Co. ....	Me.
Kerr Lake Mining Co. ....	N. Y.
Lackawanna Steel Co. ....	N. Y.
Lehigh Coal & Navigation Co. (The) .....	Pa.
Lehigh Valley Railroad Co. ....	Pa.
Long Island Railroad Co. (The) .....	N. Y.
Mackay Companies (The) .....	Mass.
Maine Central Railroad Co. ....	Me.
Manhattan Railway Co. ....	N. Y.
Manufacturers Light & Heat Co. (The) .....	Pa.
Massachusetts Electric Companies .....	Mass.
Massachusetts Gas Companies .....	Mass.
Mergenthaler Linotype Co. ....	N. Y.
Mexican Telephone & Telegraph Co. ....	Me.

Name of Company.	State where Corporation organized.
Mexico Consolidated Mining & Smelting Co. ....	Me.
Miami Copper Co. ....	Del.
National Fire Proofing Co. ....	Pa.
Nevada Consolidated Copper Co. ....	Me.
New England Cotton Yarn Co. (The) ....	Mass.
New England Telephone & Telegraph Co. ....	N. Y.
New York Central & Hudson River Railroad Co. ....	N. Y., Pa., O., Ind., Ill. & Mich.
New York, Chicago & St. Louis Railroad Co. (The) ..	N. Y., Ohio, Ind., Pa.
New York Dock Co. ....	N. Y.
New York, New Haven & Hartford Railroad Co. ....	Conn., Mass., R. I.
New York, Ontario & Western Railway Co. ....	N. Y.
Nipissing Mines Co. ....	Me.
Norfolk & Western Railway Co. ....	Va.
Northern Central ....	Md.
Northern Texas Electric Co. ....	Me.
Old Colony Railroad Co. ....	Mass.
Old Dominion Copper Mining & Smelting Co. ....	Me.
Pacific Mail Steamship Co. ....	N. Y.
Pennsylvania Railroad Co. (The) ....	Pa.
Philadelphia Co. ....	Pa.
Philadelphia Rapid Transit Co. ....	Pa.
Pittsburgh Brewing Co. ....	Pa.
Pittsburgh Plate Glass Co. ....	Pa.
Quicksilver Mining Co. ....	N. Y.
Ray Consolidated Copper Co. ....	Me.
Reading Co. ....	Pa.
Reece Button-Hole Machine Co. ....	Me.
Reece Folding Machine Co. ....	Me.
Rotary Ring Spinning Co. ....	Del.
Rutland Railroad Co. ....	Vt., N. Y.
Sears, Roebuck & Co. ....	N. Y.

Name of Company.	State where Corporation organized.
Shannon Copper Co. ....	Del.
South Utah Mines & Smelters.....	Me.
Third Avenue Railroad Co. (The).....	N. Y.
Toledo, St. Louis & Western Railroad Co. ....	Ind.
Tonopah Mining Co., Nevada (The).....	Del.
Torrington Co. ....	Me.
Union Traction Co. (Phila.).....	Pa.
United Cigar Manufacturers' Co. ....	N. Y.
United Dry Goods Companies.....	Del.
United Gas Improvement Co. (The).....	Pa.
United States Express Co. ....	N. Y.
United States Smelting, Refining & Mining Co. ....	Me.
Utah-Apex Mining Co. ....	Me.
Virginia Iron, Coal and Coke Co. ....	Va.
Virginia Railway Co. ....	Va.
Western Maryland Railway Co. ....	Md.
West End Street Railway Co. ....	Mass.
Western New York & Pennsylvania Railway Co. .Pa.,	N. Y.
Western Union Telegraph Co. ....	N. Y.
Westinghouse Electric & Manufacturing Co. ....	Pa.



# FORMS.

## ORDER APPOINTING APPRAISER.

The Forms in New York State have largely been standardized from Judge McElroy's excellent work on the Transfer Tax Law, and such forms as have not been given in the text are here set forth from "McElroy on the Transfer Tax Law," with necessary additions and changes.

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE TRANSFER TAX UPON  
ESTATE OF  
....., DECEASED.

On reading and filing the petition of ..... (*executor or administrator*) ..... of, etc., of said decedent ....., Esq., who is a person (*appointed by the Comptroller or designated by statute*) to act as appraiser in this proceeding, to fix the fair market value at the time of the transfer, of the property of the above-named decedent which is subject to the payment of any tax imposed by article X of chapter 908 of the Laws of 1896, and the acts amendatory thereof and supplemental thereto. (*Also any other facts in relation thereto which the surrogate may desire the appraiser to report upon should be stated here.*)

.....,  
Surrogate.

## OATH OF APPRAISER.

(§ 230, Tax Law.)

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF  
....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

STATE OF NEW YORK, } ss.:  
County of ....., }

....., being duly sworn, says: I am the person directed to appraise the property of the above-named decedent by order of Hon. ...., surrogate of the county of ....., State of New York, by order dated the ..... day of ....., 190., and in pursuance of chapter 908 of the Laws of 1896, and the acts amendatory thereof and supplemental thereto, I will faithfully and honestly perform the duties of such appraiser according to the best of my understanding and ability.

Sworn to before me, this ..... day  
of ....., 190..

.....,  
Notary Public.

## NOTICE OF HEARING BEFORE APPRAISER.

(§ 230, Tax Law.)

SURROGATE'S COURT — COUNT OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE

OF

....., DECEASED,  
 UNDER THE ACTS IN RELATION TO THE TAXABLE  
 TRANSFERS OF PROPERTY.

To ....., residing at .....

You will please take notice that pursuant to an order of Hon. ...., surrogate of the county of ....., made and entered the ..... day of ....., 190..., and pursuant to the provisions of chapter 908 of the Laws of 1896, and the acts amendatory thereof and supplemental thereto, I will on the ..... day of ....., 190..., at ..... o'clock in the ..... noon of that day, at ....., in the ....., proceed to appraise the property of the above-named decedent at its fair market value at the time of decedent's death, the transfer of which property or some part thereof is, or may be, subject to the tax imposed by said act, or the acts amendatory thereof and supplemental thereto.

And such of you as are under the age of twenty-one years, are required to appear by guardian, if you have one, or, if you have none, to appear and apply for one to be appointed, or, in the event of your neglect or failure to do so, a guardian will be appointed by the surrogate to represent and act for you in this proceeding at any stage thereof, as provided by section 231 of the Transfer Tax Law.

Appraiser.

Dated, ....., 190..

(A copy of this notice, together with an affidavit of mailing the same to all the persons interested in said estate, naming them, should be attached to each of the appraiser's reports.)

## SUBPÆNA.

THE PEOPLE OF THE STATE OF NEW YORK,

To ....., GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you appear and attend at ....., in the city (or village) of ....., on the ..... day of ....., 190..., at ..... o'clock, in the ..... noon of that day, before the undersigned, heretofore duly designated the appraiser by Hon. ...., surrogate of the county of ....., under the act in relation to the taxable transfers of property, in a proceeding now pending in the said Surrogate's Court, entitled, "In the Matter of the Appraisal of the Estate of ....., Deceased," to testify what you and each of you may know concerning the estate or property of the said decedent on the part of (the executors or other interested party), and that you produce or bring with you at the time and place aforesaid ..... (to be filled in in accordance with the requirements of each case). And for a failure to attend or a failure to produce the (books, papers, etc., above required) you will be deemed guilty of a contempt of court and liable to pay all loss and damages sustained thereby to the party aggrieved, and in addition thereto, forfeit the sum of fifty dollars.

Witness ....., appraiser aforesaid at ....., in the city (or village) of ....., this ..... day of ....., 190..

Appraiser.

APPLICATION TO SUPERINTENDENT OF INSURANCE

CHAMBERS OF THE SURROGATE'S COURT — COUNTY OF .....

ESTATE OF ....., DECEASED, DATE OF DEATH, .....
---

....., 190..

DEAR SIR.—In pursuance of chapter 908, Laws of 1896, and the acts amendatory thereof and supplemental thereto, you are hereby requested to determine and ascertain the value of the following estate, annuities and interests:

Name	Age	Legacy or Estate	Value or Amount
.....	.....	.....	\$.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

To Superintendent of the Insurance Department.

Respectfully,

.....,  
Surrogate.

ORDER RETURNING REPORT TO APPRAISER.

At a Surrogate's Court, held in and for the county of ....., at the  
....., in the city (or village) of ....., on the ..... day  
of ....., 190..

Present — Hon. ...., Surrogate.

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE OF ....., DECEASED, UNDER THE ACTS IN RELATION TO THE TAXABLE TRANSFERS OF PROPERTY.
---

Upon reading and filing the consents in writing of ....., Esq., attorney for the executors (or administrators), and ....., Esq., attorney for the State Comptroller, and upon the affidavit of ....., dated the ..... day of ....., 190.., from which it appears .....

IT IS ORDERED: That the report of the appraiser duly filed herein on the ..... day of ....., 190.., be returned to him for further consideration, and report, particularly in reference to .....

.....,  
Surrogate.

ORDER DETERMINING THE TAXABLE TRANSFERS AND ASSESSING THE TAX.

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE PROPERTY OF  
.....  
DECEASED, SUBJECT TO TAXATION UNDER THE TAX-  
ABLE TRANSFER ACT. CHAP. 62, ARTICLE 10.  
CONSOLIDATED LAWS.

The report of ....., heretofore appointed by me appraiser to fix the clear market value of the property of said deceased, subject to any tax imposed by the Taxable Transfer Act, Chap. 62, Article 10, Consolidated Laws, having been filed in the office of the Surrogate of said County on the ..... day of ....., 19..

Now, after reading the said report and other proofs relating to said estate before me, it is:

ORDERED AND ADJUDGED, that the cash value of the property referred to in said report, the transfer of which is subject to the tax imposed by the acts in relation to the taxable transfers of property, and the tax to which each of said transfers is liable are as follows, viz.:

Beneficiaries	Cash Value of Interest.	Exemption.	Taxable Interest.	Tax Assessed Thereon.
.....	\$.....	\$.....	\$.....	\$.....
.....	\$.....	\$.....	\$.....	\$.....
.....	\$.....	\$.....	\$.....	\$.....
.....	\$.....	\$.....	\$.....	\$.....
.....	\$.....	\$.....	\$.....	\$.....
.....	\$.....	\$.....	\$.....	\$.....
Cash value of whole estate subject to tax.....			\$.....	
Amount of tax thereon.....				\$.....

Interest on said tax is payable at the rate of ten per cent. per annum, from ....., 19.., to the date of payment, unless paid within eighteen months from the last mentioned date; but if paid within six months from said date, the discount of five per cent. shall be allowed.

.....,  
Surrogate of County.

NOTICE OF ASSESSMENT OF TAX.  
(§ 231, Tax Law.)

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF  
....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

To .....

You are hereby notified that I have, by order made and entered the ..... day of ....., 190.., assessed and fixed the cash value of such interest, estate, legacy, or property, as you are entitled to receive from the estate of the above-named decedent, and the amount of tax to which the same is liable under the laws in reference to the taxable transfers of property, as follows:

Estate, Interest or Property Transferred	Cash Value	Tax assessed Thereon
.....	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....

.....,  
Surrogate.



**NOTICE OF APPEAL TO SURROGATE.**  
(§ 232, Tax Law.)

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF  
....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

GENTLEMEN.— You will please take notice that ..... is dissatisfied with the appraisal herein of the property of the above-named decedent, as made and set forth in the report of ....., the appraiser herein, and with the order fixing and assessing the transfer tax in respect to the transfers of the property of said decedent, made and entered herein on the .... day of ..... 190., and hereby appeals to the surrogate from the said appraisal and from said order assessing tax as aforesaid, upon the following grounds:

First: .....

Second: ..... (if there are several grounds of appeals, each should be stated) .....

Dated, Albany, N. Y., ....., 190..

.....,  
Attorney for .....

To ....., Esq.,  
Attorney for .....

To ....., Esq.,  
Clerk of the Surrogate's Court, County of .....

(Upon filing this notice in the surrogate's office the appeal to the surrogate has been duly taken.)

**ORDER OF SURROGATE ON APPEAL.**

At a Surrogate's Court, held in and for the county of ....., at the surrogate's office, in the ..... of ....., on the ..... day of ....., 190..

Present — Hon. ...., Surrogate.

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF  
....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

An appeal having been taken by ....., the (*executor, legatee, or other party appellant*) from the order fixing and assessing the transfer tax herein made and entered on the ..... day of ....., 190., upon the report of ..... the appraiser herein, which report was duly filed in the office of the surrogate of the county of ..... on the ..... day of ....., 190., on the grounds that ....., as will more fully appear by reference to the notice of appeal filed herein on the ..... day of ....., 190..

And said appeal coming on to be heard, and having heard ..... Esq.,

for the ....., appellant, and ....., Esq., for the ..... respondent:

Now on motion of ....., attorney for the .....

IT IS ORDERED: That said appeal be, and the same hereby is .....

AND IT IS FURTHER ORDERED: .....  
 .....,  
 Surrogate.

### NOTICE OF APPEAL TO THE APPELLATE DIVISION.

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
 OF

....., DECEASED,  
 UNDER THE ACTS IN RELATION TO THE TAXABLE  
 TRANSFERS OF PROPERTY.

GENTLEMEN.— You will please take notice that ..... hereby appeals to the Appellate Division of the Supreme Court of the State of New York for the ..... Department, from the order of the surrogate of the county of ..... heretofore made and entered herein on the ..... day of ....., 190., affirming (or reversing or modifying) the order theretofore made and entered on the ..... day of ....., 190., fixing and assessing a tax upon the transfers of the property of said decedent under the law relating to taxable transfers of property, and from each and every part thereof (or from so much thereof, etc., stating the portion of the order appealed from).

Dated the ..... day of ....., 190..

Yours, etc.,

.....,  
 Attorney for .....

To ....., Esq.,  
 Clerk of the Surrogate's Court of the county of .....

To ....., Esq.,  
 Attorney for the State Comptroller.

### PETITION TO REMIT INTEREST.

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
 OF

....., DECEASED,  
 UNDER THE ACTS IN RELATION TO THE TAXABLE  
 TRANSFERS OF PROPERTY.

To the Surrogate's Court of the County of .....

The petition of ..... respectfully shows:

That your petitioner is the ..... of the above-named decedent, who died a resident of the county of ....., State of ....., on the ..... day of ....., 190..

That proceedings have been had before ..... appraiser herein for the determination of the tax upon the transfer of the property of said decedent, which tax has been fixed and assessed, by order entered herein on the .....

day of ....., 190., at the sum of \$....., as by reference to the report of the appraiser duly filed in the surrogate's office of said county, and the order aforesaid, will more fully appear.

That the transfer tax assessed herein has not been paid, although more than eighteen months have elapsed since the accrual thereof, and by reason of such nonpayment, interest thereon at the rate of ten per centum per annum has been incurred as provided by statute.

That by reason of ..... (here state the facts, showing the statutory reasons entitling the persons liable to pay the tax to have the interest thereon remitted to six per cent.) your petitioner believes that the interest upon said tax should be remitted from ten per cent. to six per cent. as provided by statute.

That your petitioner is desirous of paying the tax as fixed by said order herein, as soon as his claim for the remission of interest, based upon the foregoing reasons, can be passed upon by the court.

Wherefore your petitioner prays that an order be made and entered herein remitting the interest upon the tax assessed to six per cent., to be charged upon said tax from the accrual thereof until the cause of such delay was removed, after which ten per cent. is to be charged as provided by statute, provided such payment be made within ten days from the entry of the order remitting such interest as aforesaid, and that your petitioner may have such other and further relief as to the court may seem just.

Dated, ....., 190..

.....,  
Petitioner.

(Add verification.)

# NOTICE OF MOTION ON APPLICATION TO REMIT INTEREST.

SURROGATE'S COURT — COUNTY OF

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF  
....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

Please take notice that on all the papers and proceedings herein, and the verified petition of ....., hereto annexed and bearing date the ..... day of ....., 190., application will be made to the surrogate of the county of ..... at a Surrogate's Court to be held at ..... on the ..... day of ....., 190., at ..... o'clock in the ..... noon of that day, for an order remitting the interest upon the tax heretofore assessed upon the estate of the above-named decedent, by order of said surrogate made and entered the ..... day of ....., 190., from ten per cent. to six per cent. per annum, to be computed from the accrual of said tax until the circumstances preventing the earlier payment of said tax were removed, and for such other and further relief as to the court may seem just.

Dated the ..... day of ....., 190..

.....,  
Attorney for Petitioner.

To Hon. ....,  
State Comptroller, Albany, N. Y.

## ORDER REMITTING INTEREST FROM TEN TO SIX PER CENT.

At a Surrogate's Court, held in and for the county of ....., at the surrogate's office, in the ..... of ....., on the ..... day of ....., 190..

Present — Hon. ...., Surrogate.

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF

....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

On reading and filing the verified petition of ....., wherein it appears that payment of the transfer tax upon the estate of the above named decedent, as determined, has been unavoidably delayed, by reason of .....

And due notice of this application and motion having been given to ..... Esq., attorney for the State Comptroller (or to the State Comptroller personally):

Now, on motion of ....., Esq., attorney for the petitioner herein, ..... appearing (in opposition thereto or consenting thereto), it is

ORDERED: That interest at the rate of ten per cent. upon the tax heretofore assessed herein, be remitted to six per cent. per annum, to be computed from the accrual thereof until the ..... day of ....., 190.., after which date interest at the rate of ten per cent. is to be charged, until said tax is paid, as provided by the statute.

.....,  
Surrogate.

## PETITION FOR APPRAISAL AND DETERMINATION BY SURROGATE.

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF

....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

To the Surrogate's Court of the County of .....

The petition of ..... respectfully shows:

(1) That your petitioner is the ..... of, etc., of the above-named decedent, who died on the ..... day of ....., 190.., a resident of the County of ..... and State of .....

(2) That letters ..... were duly issued to petitioner on the ..... day of ....., 190.., and that your petitioner is still acting as such .....

(3) That the decedent's estate consists of cash amounting to \$..... (or articles of personal property which have been converted into cash by the executor or administrator, in his administration upon the estate, and other items of personal property, the clear market value of which at the time of decedent's death is fully stated in Schedule A, hereto annexed.)

(4) That Schedule B, hereto annexed, contains an itemized list of the debts of decedent, including funeral and testamentary expenses, commissions, etc.

(5) That Schedule C, hereto annexed, contains the names of all the legatees



## ORDER EXEMPTING ESTATE.

(§ 231, Tax Law.)

At a Surrogate's Court, held in and for the county of ..... at the surrogate's office, in the ..... of ....., on the ..... day of, 190..

Present — Hon. ...., Surrogate.

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF

....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

Upon reading and filing the verified petition of ....., wherein it appears that the decedent above named died on the ..... day of ....., 190.., a resident of the county of ..... and State of ....., and that the transfer of the property of said decedent is not subject to tax under the law relating to taxable transfers of property, and that due notice of this application was given to ....., Esq., attorney for the State Comptroller (or to the State Comptroller personally).

Now, on motion of ....., Esq., attorney for the petitioner herein, it is

ORDERED: That the transfer of property of which said decedent died seized and possessed and mentioned in said petition is exempt from tax under the law relating to taxable transfers of property

.....,  
Surrogate.

## DISTRICT ATTORNEY PROCEEDINGS — PETITION.

(§ 235, Tax Law.)

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF

....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

To the Surrogate's Court of the County of .....

The petition of ..... respectfully shows:

First: That your petitioner is the district attorney of the county of ....., in the State of New York, and your petitioner further alleges upon information and belief:

Second: That on or about the ..... day of ....., 190.., the above-named decedent died a resident of the county of ....., State of .....

Third: That thereafter proceedings were duly instituted in the Surrogate's Court of the county of ..... to have the amount of tax upon the transfers of the property of said decedent fixed and determined, as provided by the law relating to the taxable transfers of the property of decedents, and that an order was entered by the surrogate of the county of ..... in such proceedings on the ..... day of ....., 190.., fixing and assessing the transfer tax therein at the sum of ..... dollars.

Fourth: Your petitioner further shows that eighteen months have elapsed

since the accrual of said tax, and that the State Comptroller has notified your petitioner in writing if the refusal or neglect of the persons liable therefor to pay the said tax and the interest due thereon, and that no part thereof has been paid (*except, etc., where some legatee has paid the tax on his individual transfer*) and your petitioner believes that the same still remains due and unpaid.

Wherefore your petitioner prays that a citation issue under the seal of this court directed to ....., the executor (*or administrator*) of said estate, and to ....., the persons or corporations liable to taxation upon the transfers of the property of said decedent to them respectively, as appears by the taxing order, entered herein, as aforesaid, citing them, and each of them, to appear before this court on a certain day to be designated therein and show cause, if any they have, why the tax and interest under the law relating to the taxable transfers of property should not be paid.

Dated the ..... day of ....., 190..

.....,  
District Attorney of the County of .....

(Add verification.)

### ORDER GRANTING CITATION.

(§ 235, Tax Law.)

At a Surrogate's Court, held in and for the county of ....., at the surrogate's office, in the ..... of ..... on the ..... day of ....., 190..

Present — Hon. ...., Surrogate.

SURROGATE'S COURT — COUNTY OF .....

<p>IN THE MATTER OF THE APPRAISAL OF THE ESTATE OF ....., DECEASED, UNDER THE ACTS IN RELATION TO THE TAXABLE TRANSFERS OF PROPERTY.</p>
--

On reading and filing the verified petition of ....., district attorney in and for the county of ....., bearing date the ..... day of ....., 190.., it is

ORDERED: That a citation issue herein in accordance with the prayer of said petitioner.

.....,  
Surrogate.

### CITATION TO SHOW CAUSE.

(§ 2355, Tax Law.)

THE PEOPLE OF THE STATE OF NEW YORK:

By the grace of God, free and independent, to .....  
(*executors or administrators of, etc.*), and to .....  
....., greeting:

You, and each of you are hereby cited and required personally to be and appear before the surrogate of the county of ....., at the Surrogate's Court in and for said county, held at ..... on the ..... day of ....., 190.., at ..... o'clock in the ..... noon of that day, then and there to *show cause* why the transfer tax upon the transfer of the property of the above-named decedent, and upon your, and each of your, shares or

## INHERITANCE TAXATION

interests respectively, pursuant to chapter 908 of the Laws of 1896 and the acts amendatory thereof and supplementary thereto, should not be paid, which tax has been duly fixed and assessed by order of the surrogate of the county of ..... made and entered the ..... day of ....., 190., together with the interest thereon, which is now due and unpaid.

And such of you hereby cited as are under the age of twenty-one years are required to appear by your guardian, if you have one, or, if you have none, to appear and apply for one to be appointed; or in the event of your neglect or failure to do so, a guardian will be appointed by the surrogate to represent and act for you in this proceeding.

IN TESTIMONY WHEREOF we have caused the seal of the Surrogate's Court of the county of ..... to be hereunto affixed.

Witness, Hon. ...., surrogate of the county of ..... at  
(L. S.) ..... the ..... day of ..... 190..

.....  
Clerk of the Surrogate's Court.

## DECREE DIRECTING PAYMENT.

At a Surrogate's Court, held in and for the county of ....., at the surrogate's office in the ..... of ..... on the ..... day of ....., 190..

Present — Hon. ...., Surrogate.

SURROGATE'S COURT—COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF

....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

Upon the petition of the district attorney, heretofore filed herein on the ..... day of ....., 190., and the report of the appraiser, and the order entered thereon on the ..... day of ....., 1905, fixing and assessing the tax upon the transfers of the property of the above-named decedent, and after hearing ....., Esq., on behalf of Hon. ...., district attorney, in support of said petition and upon all the papers and proceedings herein, and (*no one appearing in opposition thereto or*) ..... attorney for ..... herein, having appeared in opposition thereto, it is

ORDERED: That ..... the (*executor or administrator*) herein make payment forthwith to the State Comptroller of the sum of ..... dollars, being the amount of tax upon the interests of ..... together with interest upon each of said sums respectively, at the rate of ten per cent. per annum, from the ..... day of ....., 190., to the date of payment (*or*)

ORDERED: That (*reciting a direction similar to the foregoing that each legatee or distributee shall pay forthwith the tax and interest assessed upon the transfer to him individually*).

AND IT IS FURTHER ORDERED: That said (*executor or administrator*) pay to Hon. ...., district attorney, the sum of ..... dollars, as and for his costs and disbursements herein; (*or*)

AND IT IS FURTHER ORDERED: That Hon. ...., district attorney, is allowed the sum of ..... dollars, as and for his costs and disbursements herein, to be paid forthwith by the above legatees or distributees in proportion to the amount of tax due and owing by each respectively, and in addition to said tax and interest.

.....  
Surrogate.



# **AFFIDAVIT FOR APPRAISAL OF THE PROPERTY OF NON-RESIDENT DECEDENTS.**

**SURROGATE'S COURT—COUNTY OF .....**

**IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF**

**....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.**

**STATE OF NEW YORK, {  
County of ....., } ss.:**

....., being duly sworn says:

First: That he resides at ....., and that the above-named decedent died on the ..... day of ....., 190..., a resident of ..... in the State of ....., and that thereafter letters testamentary (or letters of administration) were issued to deponent by the ..... Court of the county of ....., State of ....., on the ..... day of ....., 1905, and deponent thereupon entered upon the discharge of his duties as such (executor or administrator), and that he is still acting as such (executor or administrator).

Second: That Schedule A, hereto annexed, and made a part hereof, contains an itemized statement of all the property, real and personal, of which the said decedent died seized or possessed, situated within the State of New York, including the shares of stock of all New York corporations, debts owing to decedent by debtors residing in the State of New York, certificates of deposit, choses in action, or other property

Third: That Schedule B, hereto annexed and made a part hereof, contains an itemized statement of all the personal property owned by said decedent, situated without the State of New York.

Fourth: Said decedent, at the time of his death, had no safe-deposit box, individually or held jointly in the name of the decedent and one or more persons within the State of New York, in which was deposited bonds, public or private, mortgages, money, or any evidences of debt whatsoever; that he was not carrying on any business or interested in any copartnership within the State of New York; that he owned no shares of stock of national banks situated therein, and did not own any jewelry, horses, carriages, furniture, or other items of personal property of any nature or kind whatsoever in said State, except as fully set forth in said Schedule A, hereto annexed. (*If the decedent exercised a power of appointment over any property within this State, the facts should be fully stated here.*)

Fifth: That prior to his death the said decedent made no transfer of property within the State of New York by deed, grant, bargain, sale, or gift made in contemplation of death or intended to take effect in possession or enjoyment at or after death. (*State whether any person or persons became entitled to any remainder or reversion in property within this State by reason of the decedent's death.*)

Sixth: That the fair market value of the decedent's entire personal estate, wheresoever situated, at the time of his death, was ..... dollars.

Seventh: That Schedule C, hereto annexed, and made a part hereof, contains an itemized statement of the funeral expenses and expenses of administration incurred and to be incurred by the representatives of said estate. Also an itemized statement showing the valid debts due and owing by decedent at the time of his death, and the commissions to which I am entitled as (executor or administrator) by the laws of the state of .....

Eighth: That all the persons interested in said estate are of full age and

sound mind, except .....

Ninth: (*When decedent left a will.*) That Schedule D, annexed hereto, and made a part hereof, contains a full and true copy of the decedent's last will and testament.

(*When decedent died intestate.*) That all the persons who are entitled to share in the estate of said decedent, together with their relationship, places of residence, and the share or interest of each are as follows:

Name of Distributee	Relationship	Place of Residence	Share or Interest
.....	.....	.....	\$.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

....., Executor or Administrator.

Sworn to before me, this .... day  
of ....., 190..

....., Notary Public.

(*County clerk's certificate should be attached.*)

#### PETITION FOR APPRAISAL — NON-RESIDENT DECEDENT.

SURROGATE'S COURT—COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF  
....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

To the Surrogate's Court of the County of:

The petition of ..... respectfully shows:

First: That he is (*the executor, administrator, or other interested person, including the State Comptroller*), and as such is interested in the estate of the above-named decedent.

Second: That, as petitioner is informed and believes, the above-named decedent died on or about the ..... day of ..... 190.., a resident of ....., in the county of ....., and State of ....., and at the time of his death he was seized and possessed of property in the county of ....., in the State of New York, all or some part of which is subject to taxation under the laws relating to the taxable transfers of property, to the value of and upwards of (*ten thousand dollars, or where it passes to collaterals, in whole or in part, five hundred dollars*).

Third: That your petitioner is informed and believes that said decedent (*died intestate, or*) left a last will and testament which *was thereafter and* on or about the ..... day of ....., 190.., duly admitted to probate by the ..... Court of the county of ....., State of ....., by the terms of which said decedent appointed ..... of ..... the executor of his said will and the said ..... is still acting as such executor.

Fourth: That, as deponent is informed and believes, no application has been made for ancillary letters upon the estate of said decedent in the county of ..... or any other county in this State, and that no proceeding has been brought by the representatives of said decedent to fix and determine the tax upon the transfers of the property of said decedent within this State at the time of his death, although application has been, or is about to be, made by

such representatives to remove such property from the State of New York without first having the transfer tax thereon determined and paid.

Fifth: That (*where decedent left a will*) attached hereto is a copy of the decedent's will: (*where the decedent died intestate*) attached hereto is an affidavit of the foregoing administrator of said decedent showing .....

Sixth: That all the persons who are interested in said estate, and who are entitled to notice of all proceedings herein and their addresses, are as follows:

.....	Comptroller	Albany, N. Y.
.....	.....	.....
.....	.....	.....
.....	.....	.....

Seventh: (*Where application is made on behalf of the State Comptroller.*) That attached hereto, and made a part hereof, is the affidavit of the executor (*or administrator*), showing in detail the facts hereinbefore stated.

Wherefore your petitioner prays for the entry of an order herein directing the appraisal of the property of the above-named decedent, as provided by law.

Dated (Albany, N. Y.), ..... 190..

.....  
Petitioner.

(Add verification.)

**ORDER DESIGNATING APPRAISER — NONRESIDENT DECEDENT.**  
(§ 230, Tax Law.)

(The order designating appraiser in case of resident decedents can be used in designating an appraiser of the property of non-resident decedents, with slight change where reference is made to the petition upon which the order is granted. See form on page 411.)

**AFFIDAVIT.**

**Required by the State Comptroller upon Application for the Removal or Transfer of the Property of a Nonresident Decedent, where Transfer Tax Proceedings have not been Instituted.**

APPLICATION TO THE COMPTROLLER OF THE  
STATE OF NEW YORK  
FOR CONSENT TO TRANSFER CERTAIN PROP-  
ERTY BELONGING TO  
.....,  
LATE A RESIDENT OF.....

Application is made to the Comptroller of the State of New York for consent to transfer the following property belonging to the above-named non-resident decedent, pursuant to section 227 of the Transfer Tax Law of the State of New York, namely:

	Present value.
100 shares Erie common stock, par value, \$100, at.....	\$.....
Deposit in the Albany Savings Bank .....	.....
Total .....	\$.....

(All the property within this State should be set forth, including stocks of New York corporations, etc., as required by the following affidavit, to be attached to such application:)

STATE OF NEW YORK, }  
 County of ....., } ss.:

....., being duly sworn, says: (*the affidavit should show the following facts*):

Name of decedent — date of death, and decedent's late residence.

Name and address of the executor or administrator, and whether ancillary letters have been applied for in this State or not.

Shares of stock of various New York corporations owned by the decedent.

Bonds, foreign and domestic, physically present within this State at the time of decedent's death.

Bank stock, and cash on deposit in any savings bank or other institution in this State. Also, certificates of deposit issued by any bank, trust company, or other institution in this State.

Policies of insurance upon the life of such non-resident issued by corporations of this State and payable to the decedent or his legal representatives.

Notes or other evidences of indebtedness owing such non-resident by residents of this State.

Whether the decedent was interested in any partnership, or carried on any business within this State, and if so, the nature and location thereof. Also whether the decedent was entitled to any legacy or share of an estate, the nature, amount, and particulars in reference thereto.

If the non-resident decedent exercised a power of appointment over any property within this State, that fact shall be fully set forth, also whether any remainder or reversionary interest passed under any prior will, or any transfer to any one in possession or enjoyment, as the result of the decedent's death.

Real property in this State owned by decedent, giving a brief description of each parcel, and the estimated value thereof, after deducting any incumbrances thereon.

Any property, real or personal, or any interest therein, other than the above within the State of New York, and the values thereof.

Whether the decedent made any transfer of property within this State in contemplation of death or intended to take effect in possession or enjoyment at or after his death.

The names, residence, and relationship of all persons receiving any portion of the decedent's property and the amount, or other interest therein, whether such persons are residents of this State or not; also the character of any corporation of the State of New York, or any other State, to and for the use of which any part of the stock of New York corporations — the proceeds from the sale thereof or any other property within this State, will be transferred by reason of the will of said decedent.

Sworn to before me, this .....  
 day of ....., 190..

Notary Public (or other officer before whom  
 affidavit is made).

#### AGREEMENT — UPON COMPOSITION OF TRANSFER TAX.

SURROGATE'S COURT— COUNTY OF .....

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
 OF  
 ....., DECEASED,  
 UNDER THE ACTS IN RELATION TO THE TAXABLE  
 TRANSFERS OF PROPERTY.

WHEREAS, The above-named ..... died on the ..... day  
 of ....., 190., a resident of the county of ..... and State

of ....., leaving a last will and testament which was duly admitted to probate in the Surrogate's Court of the county of ....., and letters testamentary were thereupon issued to ....., of ....., New York.

AND WHEREAS, Transfer tax proceedings were thereafter regularly instituted in the Surrogate's Court of the county of ....., and by order of Hon. ...., surrogate of said county of ....., made and entered the ..... day of ....., 190., ....., Esq., was directed to appraise the property of said decedent pursuant to the provision of the law relating to the taxable transfers of property, and the report of such appraiser was filed in the office of the surrogate aforesaid, and an order entered thereupon on the ..... day of ....., 190., fixing and assessing a transfer tax upon certain transfers of said decedent's property at the sum of \$.....

AND WHEREAS, Decedent by the ..... clause of his will provided as follows: .....

AND WHEREAS, It appears from the report of said appraiser that in view of the foregoing provision (or provisions) of said decedent's will it was impossible to presently determine the value of the estate or property transferred to ..... at the time of the decedent's death, and that the appraisal thereof was therefore postponed until the value of said transfers could be definitely determined (or such other facts by reason of which the present taxability of the transfer has been heretofore held for future appraisal, it appearing that the remainders or expectant estates were of such a nature, or so disposed and circumstanced, that the taxes thereon were held not present payable, or where the interests of the legatees or devisees were not ascertainable as provided in section 233 of the Tax Law.)

AND WHEREAS, The said (executor or trustees) above named are now desirous of personally settling the remaining claims of the people of the State of New York upon or in respect to the transfers of the property or estates, and the tax thereon which may now be due and payable, or which may hereafter become payable, under the laws of the State of New York, and by compounding all such taxes upon terms which are equitable and expedient, and that said executor or trustees be granted a discharge upon the payment of the taxes provided for in this composition agreement in pursuance of the law in such case made and provided.

NOW, THEREFORE, In consideration of the following:

IT IS HEREBY STIPULATED AND AGREED: That the transfer tax in respect to ..... be, and the same hereby is ascertained, fixed, compounded, and adjusted at the sum of ..... dollars (\$.....), which sum it is agreed shall be accepted by the Hon. ...., as Comptroller of the State of New York, by and with the approval of the Hon. ...., Attorney-General of the State of New York, in full payment, satisfaction, and discharge of all transfer taxes which are payable, or which, but for this agreement, might at any time hereafter become due and payable to the State of New York, under or by virtue of the laws thereof, upon or in respect to the transfers of the property or estate of the above-named decedent which are mentioned and referred to as compromised, and which have become fully settled and adjusted by the execution of this composition agreement, as provided by section 233 of the Transfer Tax Law.

IN WITNESS WHEREOF, the said ..... (executor or trustees), under the will of the said ..... deceased, and Hon. .... Comptroller of the State of New York, have signed and acknowledged the execution of these presents in triplicate, this ..... day of ..... 190..

..... [L. S.]  
 ..... [L. S.]  
 ..... [L. S.]

Approved, this ..... day of ....., 190..

.....  
 Attorney-General.

(Add acknowledgments by the representatives of the estate, and State Comptroller.)

## INHERITANCE TAXATION

## CERTIFICATE.

Of Comptroller Showing Payment of Tax upon Real Estate Belonging to Decedent.

STATE OF NEW YORK,  
COMPTROLLER'S OFFICE.

IN THE MATTER OF THE APPRAISAL OF THE ESTATE  
OF  
....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

ALBANY, N. Y., ....., 190..

I, ....., Comptroller of the State of New York, do hereby certify that it appears from the records of this office that upon the report of ....., appraiser in and for the county of ....., in the State of New York, a duplicate copy of which report was filed in this office on the ..... day of ....., 190.., an order was made by Hon. ...., surrogate of ..... county, on the ..... day of ....., 190.., assessing a transfer tax upon the transfers of the property of said ....., who died a resident of ..... on the ..... day of ....., 190..; that the amount of said tax assessed, as aforesaid, was the sum of \$....., a part of which sum is the tax assessed upon the transfer of certain real estate, of which the above-named decedent died seized and which is described and appraised in the report of said appraiser as follows, namely: .....

And I further certify that the amount of said tax (*less the discount for payment within six months from the accrual thereof; or, together with interest thereon at the rate of ..... per cent. per annum from the accrual thereof, where not paid within eighteen months*) has been fully paid by ..... (*the executor or administrator*) of said estate, and that the final duplicate receipts showing such payments were issued under date of ....., 190.., and that by reason thereof the lien of the State of New York upon the real estate hereinbefore described, for tax (*and interest*) due upon the transfer thereof, has been fully satisfied and discharged.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed [L. S.] my official seal, this ..... day of ....., 190..

.....,  
Comptroller.

(If the tax upon real estate was paid by the devisee or heir-at-law the foregoing certificate will be modified accordingly. It would seem that the heir or devisee is not entitled to this certificate until the tax has been assessed, although payment on account thereof may have been made.)

**APPLICATION TO JUSTICE OF SUPREME COURT FOR REAPPRAISAL.**

SUPREME COURT — COUNTY OF .....

IN THE MATTER OF THE APPLICATION  
OF  
HON. ....,  
STATE COMPTROLLER, FOR A REAPPRAISAL OF  
THE PROPERTY  
OF  
....., DECEASED,  
UNDER THE ACTS IN RELATION TO THE TAXABLE  
TRANSFERS OF PROPERTY.

To the Hon. ...., one of the Justices of the Supreme Court of the  
..... Judicial District:

The petition of Hon. .... respectfully shows:

(1) That your petitioner is the Comptroller of the State of New York, and that the above-named decedent was a resident of ..... in the county of ....., and State of New York at the time of his death, which said place is within the ..... judicial district of the Supreme Court of this State.

(2) That the said decedent died on the ..... day of ....., 190., and letters (*testamentary or of administration*) were issued by the surrogate of the county of ..... to ....., who were and are the duly qualified and acting (*executors and administrators*) of the estate of said decedent.

(3) That proceedings have heretofore been instituted to determine the clear market value of the decedent's estate at the time of the transfer thereof and the liability of the transfers of said decedent's property to taxation under chapter 908 of the Laws of 1896 and the acts amendatory thereof and supplemental thereto, and upon the report of ....., Esq., the appraiser in such proceedings, an order was entered by the surrogate of the county of ..... on the ..... day of ....., 190.. (*determining the value of decedent's estate to be the sum of \$..... and exempting said estate or fixing and assessing the tax upon the transfers of said decedent's property, as follows*):

(4) That your petitioner is informed and believes that such appraisal (*assessment or determination*) was (*fraudulently, collusively, or erroneously made*) owing to the following errors of fact, namely, .....

(5) That two years have not elapsed since the entry of the order or decree of the surrogate determining the value of said estate and assessing the tax thereon (*or exempting said estate from taxation*).

(6) That all the persons (*or corporations*) who are interested in said estate and who are entitled to notice of all proceedings herein, together with their post-office addresses or places of business, are as follows:

Name.	Interested as.	P. O. Address.
.....	.....	.....
.....	.....	.....
.....	.....	.....

And that all of said persons are of full age and sound mind except .....

Wherefore your petitioner prays for the appointment of some competent person to reappraise the estate of the above-named decedent, in accordance with the provisions of section 232 of the Tax Law.

Dated, Albany, N. Y., ....., 190..

(Add verification.)

.....,  
Petitioner.

# AFFIDAVIT TO BE FILED UPON APPLICATION FOR LETTERS TESTAMENTARY OR LETTERS OF ADMINISTRATION.

SURROGATE'S COURT — COUNTY OF .....

IN THE MATTER OF THE APPLICATION FOR LETTERS  
(*Testamentary or of Administration*) UPON  
THE ESTATE

OF

....., DECEASED,

STATE OF NEW YORK, { ss.:  
COUNTY OF ....., }

....., being duly sworn, says: That he is the petitioner herein; that the above-named decedent died at the ..... of ..... in the county of ....., and State of New York, on the ..... day of ..... 190..

That the estimated value of the real property in this State of which said decedent died seized (*less any mortgage incumbrance thereon*) is ..... dollars (\$.....).

That the estimated value of the personal property of which said decedent died is possessed is ..... dollars (\$.....).

That the following is a complete list of the names, residence, and relationship to decedent of all persons entitled to any legacy or share of the decedent's estate (*and the names and place of business of all corporations who are entitled to any legacy or devise under the will of said decedent*), together with the character and value of such legacy, devise (*or share*) as far as the same can at present be determined:

Name.	P. O. Address.	Relationship.	Value.
.....	.....	.....	\$.....
.....	.....	.....	\$.....
.....	.....	.....	\$.....
.....	.....	.....	\$.....
.....	.....	.....	\$.....

Petitioner, and executor named in decedent's will (*or petitioner, and person entitled to administer upon decedent's estate.*)

Sworn to before me, this ..... day  
of ....., 190..

.....,  
Notary Public.

## NOTICE BY BANK OR TRUST COMPANY OF THE TRANSFER OF DEPOSITS.

....., 190..

Hon. ...., State Comptroller, Albany, N. Y.:

DEAR SIR.—The ..... (*bank or trust company*) pursuant to section 227 of chapter 368 of the Laws of 1905, hereby gives notice that on the ..... day of ....., 190.., or earlier, upon receipt of your written consent, it will deliver or transfer the funds now on deposit to the credit of ....., who was a resident of the county of ..... State of ....., to ....., who is the duly qualified and acting executor (*or administrator*) of the estate of said decedent.

The post-office address of the said executor (*or administrator*) is .....

Yours, etc.,

.....,  
Secretary or Treasurer, Etc.



**NOTICE OF THE INTENDED TRANSFER OF STOCK OF NEW YORK CORPORATIONS.**

....., 190..

Hon. ...., State Comptroller, Albany, N. Y.:

DEAR SIR.—In compliance with section 227 of chapter 368 of the Laws of 1905, you are hereby notified that on ....., 190.., or earlier, upon receipt of your written consent, I will transfer ..... shares of the capital stock of ....., registered in the name of ....., now deceased, and whose late residence was at ....., in the State of .....

The executor (or administrator) of the above-named decedent is ....., whose post-office address is ....., State of .....

If there be no objection to the proposed transfer kindly forward the usual consent.

Yours, etc.,

.....,  
Secretary or other officer.

**NOTICE OF INTENDED DELIVERY OF CONTENTS OF SAFE-DEPOSIT BOX TO EXECUTORS, ETC.**

....., 190..

Hon. ...., State Comptroller, Albany, N. Y.:

DEAR SIR.—This will notify you that ..... late a resident of the county of ....., in the State of ....., was (*the individual or joint*) lessee of a safety-deposit box in the vaults of (*bank or other institution*), and that application has been made by the (*executors or administrators or the surviving lessee*) for the delivery of the contents of said box, belonging to the above-named decedent, to such (*executor, administrator, or other person aforesaid*), and that pursuant to section 227 of chapter 368 of the Laws of 1905 the (*bank or other institution*) aforesaid hereby notifies you that it will on the ..... day of ....., 190.., at ..... o'clock in the ..... noon of that day deliver the contents of said safety-deposit box to the said (*executor, administrator, etc.*).

(*In case of resident decedents.*) Your consent for such delivery, without retaining a sufficient portion or amount thereof to pay any tax and interest which may be thereafter assessed upon the transfer of such property, is requested.

Yours, etc.,

**NOTICE BY BANK OR TRUST COMPANY OF THE TRANSFER OF DEPOSITS IN THE JOINT NAMES OF A DECEDENT AND ONE OR MORE PERSONS, OR IN TRUST FOR ANOTHER.**

....., 190..

Hon. .... State Comptroller, Albany, N. Y.:

DEAR SIR.—The ..... (*bank or trust company*), of ....., hereby gives notice that there is standing upon the books of this (*bank or trust company*) a deposit amount to \$...... in the name (*or in the*

*joint names) of ("John Doe or Richard Roe"—"John Doe (and) (or Richard Roe, either or the survivor can draw"—"John Doe, in trust for Richard Roe"—or otherwise) and the officers of said (bank or trust company) are informed and believe that ..... one of the persons above named, has recently died, a resident of ..... in the county of ..... and State of ....., and that on the ..... day of ....., 190..., at ..... o'clock, A. M., the said (bank or trust company) will, at the request of (the executor, administrator, cestui que trust, survivor, or other interested person) transfer or deliver the funds representing said deposit to the said (name the person making application therefor). Your consent to this transfer is desired pursuant to section 227 of chapter 368 of the Laws of 1905.*

Yours, etc.,

.....

# THE STATE STATUTES

## ALABAMA.

This State has levied no inheritance tax since 1868.

The State Constitution, section 219, prohibits a direct inheritance tax and limits any collateral inheritance tax to two and one-half per cent.

## ALASKA.

Levies no inheritance taxes.

## ARIZONA.

Taxes all property of nonresidents within the State.

TABLE OF GRADED RATES.

CLASSIFICATION OR RELATIONSHIP	Property exempt	Application of rates to value of inheritance or bequest			
Grandparents, parents, husband, wife, child, brother, sister, wife or widow of son, husband of daughter adopted or mutually acknowledged child, or any lawful lineal descendant.	Where whole estate less than \$10,000 no tax.	1% on all above \$5,000.			
	Exempt \$5,000.				
Uncle, aunt, niece, nephew or lineal descendant of the same.	Where whole estate valued at less than \$5,000 no tax. Exemption \$2,000.	2% on all above \$2,000.			
All others.	Exemption \$500.	Up to \$10,000 in excess of exemption	\$10,000 to \$20,000	\$20,000 to \$50,000	All in excess of \$50,000
		3%	4%	5%	6%

## LAWS OF 1912, CHAPTER 15, BECAME A LAW JUNE 8, 1912.

Section 1. All property within the jurisdiction of the state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by statutes of inheritance of this or any other state, or by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, or donor, to any person or persons, or to any body, or bodies, politic or corporate, in trust or otherwise, or by reason whereof any person, or body politic or corporate, shall become beneficially entitled, in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified in section 2 of this act, to be paid to the state treasurer for the use of the state; and all heirs, legatees, and devisees, administrators, executors, and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the life of the grantor

or donor, shall be respectively liable for any and all such taxes with interest thereon until the same shall have been paid, as hereinafter provided.

§ 2. Establishes the rates and exemptions as shown in the above table.

§ 3. Provides that taxes shall accrue at death, are payable in eight months but on contingent remainders tax suspended until they fall in.

§ 4. Provides that executors shall deduct tax where devise or inheritance is in money or collect it from beneficiary after valuation where it is in property and shall not deliver it until tax is paid.

§ 5. Provides that the tax shall be paid to the state treasurer who must give a voucher which must be produced on final accounting unless a bond has been filed as provided in section 13.

§ 6. Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy, or gift, until paid, and the person to whom such property is transferred, and the administrators, executors, and trustees of every estate embracing such property shall be personally liable for such tax until its payment, to the extent of the value of such property; and provided, further, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be conclusively presumed to be paid and cease to be a lien as against the estate, or any part thereof, of the decedent.

§ 7. If such tax is paid within eight (8) months from the accruing thereof, a discount of five per centum (5%) shall be allowed and deducted therefrom. If such tax is not paid within eight (8) months from the accruing thereof, interest shall be charged and collected thereon at the rate of eight per centum (8%) per annum from the time the tax is due and payable unless by reason of claims upon the estate, necessary litigation, or other unavoidable delay such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per centum (6%) per annum shall be charged upon such tax from the time from the accruing thereof until the cause of such delay is removed, after which eight per centum (8%) shall be charged. In all cases when a bond shall be given, under the provisions of section 13 of this act, interest shall be charged at the rate of six per centum (6%) from the accrual of the tax until the date of the payment thereof.

§ 8. Gives power of sale to pay tax in same manner as to pay debts.

§ 9. Provides that where a legacy is made a charge on any property the heir or devisee shall deduct the tax and pay it and the tax remains a lien on the property so charged until paid and payment may be enforced in the same manner as payment of the legacy or by county attorney.

§ 10. Provides that where a tax has been erroneously paid it shall be refunded if the application is made within three years of the payment.

§ 11. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in the state standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state treasurer on or before the transfer thereof, and no such assignment or transfer shall be valid unless such tax is paid.

§ 12. No safe deposit company, trust company, bank, corporation, or other institution, person, or persons, holding securities or assets of a decedent, or corporation in which said decedent, at the time of his death, owned any stock, shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent, or upon their order or request, unless notice of the said time and place of such intended transfer be served upon the state treasurer in writing at least five days prior to the said transfer; and it shall be lawful for the said state treasurer, personally or by representative, to examine said securities prior to the time of such delivery or transfer. If upon such examination the state treasurer, or his said representative, shall, for any cause, deem it advisable that such securities or assets should not be immediately delivered or transferred, he may forthwith notify, in writing, such company, bank, institution, or person, to defer delivery or transfer thereof for a period not to exceed ten (10) days from the date of such notice, and thereupon it shall be the duty of the party notified to defer such delivery until the time stated in such notice, or until the revocation thereof within such ten (10) days; failure to serve the notice first above-mentioned or to

allow such examination, or to defer the delivery of such securities or assets for the time stated in the second of said notices, shall render said safe deposit company, trust company, corporation, bank, or other institution, person or persons, liable to the payment of the tax due on said securities or assets, pursuant to the provisions of this act.

§ 13. Any person or corporation beneficially interested in any property chargeable with a tax under this act, and executors, administrators, and trustees, thereof, may elect, within six (6) months from the death of the decedent, not to pay such tax until the person or persons beneficially interested therein shall come into actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in the penal sum of three times the amount of such tax, with such sureties as the superior judge of the proper county may approve, conditioned upon the payment of such tax and interest thereon, at such time and period as the person or persons beneficially interested therein may come into actual possession or enjoyment of such property, which bond shall be executed and filed, and a full return of such property upon oath made to the superior court within six (6) months from the date of transfer thereof, as herein provided, and such bond must be renewed every five years.

§ 14. Provides that where there is a bequest to executors in lieu of commissions the amount in excess of a reasonable commission is taxable.

§ 15. Gives to the superior court having jurisdiction to grant letters testamentary or of administration jurisdiction over all questions arising under the statute.

§ 16. Requires the judge to notify the state treasurer of an application for letters and to assess the tax. The state treasurer may apply for letters as a creditor.

§ 17. Requires the executor or administrator within one month of his appointment to make an inventory and appraisal and file it with the clerk of the court.

§ 18. Upon application the court may extend the time to three months.

§ 19. Every executor or administrator, or trustee of any estate subject to the tax herein provided, shall, at least ten days prior to the first appraisal thereof, as provided by law, notify the state treasurer in writing of the time and place of such appraisal, and shall file due proof of such notice with a copy thereof with the clerk of the court having jurisdiction of such estate or trust. Every executor, administrator, or trustee, within ten days after such appraisal, or appraisal of any beneficial interest or reappraisal thereof, and before payment and distribution to the legatees or any parties entitled to beneficiary interest therein, shall make and render to the said state treasurer a copy of the said inventory and appraisal, duly certified as such by the clerk of the court having jurisdiction of said estate, and shall also make and file with the said state treasurer a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of tax which has accrued or will accrue thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the state treasurer, which schedule, list, or statement, shall contain the name of each and every person entitled to any beneficiary interest therein, together with the clear value of such interest therein, as found and determined by the court having jurisdiction of said estate. One of said schedules shall be kept and retained by the state treasurer, and the other delivered by him to the secretary of state.

§ 20. Provides that the court may accept the above appraisal or order as a reappraisal, wholly or in part.

§ 21. Provides for the appointment of an appraiser in such case.

§ 22. Every inheritance, devise, bequest, legacy, or gift, upon which a tax is imposed under this act, shall be appraised at its full and true value immediately upon the death of the decedent, or as soon thereafter as may be practicable; provided, however, that when such devise, bequest, legacy, or gift, shall be of such a nature that its full and true value cannot be ascertained at

such time, it shall be appraised in like manner at the time when such value first becomes ascertainable. The value of every future or contingent or limited estate, income, interest, or annuity dependent upon any life or lives in being, shall be determined by the rules or standard of mortality, and of value commonly used by actuaries' combined experience tables, except that the rates of interest in computing the present value of all future and contingent interest or estate shall be four per centum (4%) per annum.

§ 23. Provides for proceedings before the appraiser and notice to the parties interested.

§ 24. Requires the court to fix the tax on the appraiser's report or that it may value the property and fix the tax without an appraiser.

§ 25. Requires the court to give notice by mail to all parties interested of the valuation and assessment.

§ 26. Provide for filing objections to the assessment, rehearing, affirmance or reappraisal and appeal by any party in interest to the supreme court.

§ 27. Provides for the collection of delinquent taxes by the county attorney on motion of the state treasurer.

§ 28. Provides that the secretary of state shall furnish books and forms and for the compilation of data regarding decedent's estate by the court clerks.

§ 29. Provides for quarterly reports by the judges of the superior court and the county recorders.

§ 30. Requires the state treasurer to furnish copies of transfer tax receipts on payment of a fee of twenty-five cents.

§ 31. Makes a similar provision in regard to county recorder's receipts.

§ 32. Whenever an estate charged, or sought to be charged, with the inheritance tax, is of such a nature or is so disposed that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the state treasurer may, with the written approval of the attorney-general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the superior court having jurisdiction of the estate, and after such approval the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

§ 33. Requires executors, administrators and trustees to send certified copies of their reports to the state treasurer.

§ 34. Provides for appeals in transfer tax proceedings in the same manner that other appeals are taken from the superior court.

§ 35. Imposes a fine of \$500 for willfully secreting a last will of a decedent.

§ 36. Provides a similar fine for administering the estate of decedent without proving the will or taking out letters of administration within six months.

§ 37. Requires administrators or executors to notify the state treasurer when any real estate of a decedent passes to any body politic or corporate directly or in trust.

§ 38. Except as to real property located outside of the state passing in fee from the decedent owner, the tax imposed under section 2 shall hereafter be assessed against and be collected from property of every kind, which, at the death of the decedent owner, is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distributive purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the state.

§ 39. In case of any property belonging to a foreign estate, which estate in whole or in part is liable to pay an inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator, or trustee, of such foreign estates files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner,

and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate.

§ 40. Prohibts additional compensation to any officer by reason of any additional duties imposed by the act.

§. 41. Provides for refund to state treasurer of any expenses incurred in enforcing the tax.

§ 42. Provides fine and imprisonment against an appraiser accepting a fee or reward from executors, heirs or devisees.

§ 43. All acts and parts of acts in conflict herewith are hereby repealed.

**Prior Statutes.**—No inheritance tax prior to 1912.





Chapter 197, L. 1913, as amended by L. 1915, approved March 23, 1915, and L. 1917.

Section 1. (1) The words "estate" and "property" as used in this act, shall be taken to mean the property or interest therein, passing or transferring to any individual or corporate legatees, devisees, heirs, next of kin, grantees, donees or vendees, including the widow's dower, or any property in any way granted, given or devised to the widow in lieu of dower, and the husband's courtesy, or any gift, grant or bequest by the wife to the husband, and not as the property or interest therein of the decedent, donor or vendor, and shall include all property or interest therein, whether situated within or without the state. Provided, five thousand (\$5,000.00) dollars of the market value of the widow's dower or the husband's courtesy shall be exempt from taxation. [As amended by L. 1917.]

(2) The words "tangible property" as used in this act shall be taken to mean corporeal property, such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in banks, shares of stock, bonds, notes, credits or evidences of an interest in property or evidences of debt.

(3) The words "intangible property" as used in this act shall be taken to mean incorporeal property, including money, deposits in bank, shares of stock, bonds, notes, credits, evidences or an interest in property and evidences of debt.

(4) The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed.

§ 2. A tax shall be and is hereby imposed upon the transfer of any tangible property within the state and of intangible property or any interest therein or income therefrom in trust or otherwise, to persons or corporations in the following cases, subject to the exceptions and limitations hereinafter prescribed.

(1) When a transfer is by will or by the intestate laws of this state of any intangible property or of tangible property within the state from any person dying seized or possessed thereof while a resident of the state.

(2) When the transfer is by will or by the interstate laws of this state of tangible property within the state, or intangible property consisting of shares of stock or of bonds of corporations organized and existing under the laws of Arkansas; or if intangible property, consisting of shares of stock or of bonds of foreign corporations owning property within the state of Arkansas, and the decedent was a nonresident of the state at the time of his death; provided, that in the case of stocks or bonds held by a nonresident decedent in a foreign corporation, owning property within this state, the value of such stock for the purposes of this act shall be taken to be that proportion of its true value, which the physical property of such corporation located in this state bears to the total physical property of such corporation wherever located.

(3) When the transfer is of intangible property or of tangible property within the state made by a resident, or of tangible property within the state made by a nonresident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

(4) When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof of any such transfer.

(5) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act.

(6) The tax imposed hereby shall be upon the clear market value of such property, and shall be and remain a lien upon the property transferred until paid.

§ 3. The following exemptions from the tax are hereby allowed:

(1) All property transferred in good faith to societies, corporations and institutions now or hereafter exempted by law from taxes, or to any public

corporation or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose) or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, by reason whereof any such person or corporation shall become beneficially entitled in possession or expectancy to any such property or to the income thereof, shall be exempt.

(2) Property of the clear value of three thousand dollars (\$3,000.00) transferred to a widow or to a minor child of the decedent, and of one thousand dollars (\$1,000.00) transferred to each of the persons described in the first subdivision of section 4, shall be exempt.

(3) Property of the clear value of five hundred dollars (\$500.00) transferred to any person or corporation other than the persons described in said first subdivision of section 4.

(4) Provided, that when any estate on which the tax is due is large enough to pay the tax in full and leave a sum equal to or greater than the exemptions provided in subdivisions No. 2 and No. 3 of this section, the tax shall be paid on the value of the entire estate without deductions of the exemptions provided by subdivisions No. 2 and No. 3, or any other deduction or abatement whatever.

Sections 4 and 5 fix the rates as shown in the foregoing table.

§ 6. This act shall apply to all transfers from the estates of decedents whose death occurs subsequent to the date when this act takes effect, and not to transfers from estates when the decedent died prior to the taking effect of this act, except as provided in subdivision 5 of section 2.

§ 7. When any grant, gift, legacy or succession upon which a tax is imposed by section 2 of this act shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent and the market value thereof determined, in the manner provided in section 13 of this act, and the tax prescribed by this act shall be immediately due and payable to the state treasurer, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid.

§ 8. Taxes excess over reasonable compensation of devise to executors or trustees in lieu of commissions.

§ 9. Provides that taxes are due at death. No interest until after six months. After twelve months a 10 per cent. penalty in addition to the interest except in case of necessary litigation or unavoidable delay but litigation to defeat the tax is not "necessary litigation."

§ 10. (1) Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the heir or devisee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the probate court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees and for such further order relative thereto as the case may require.

(2) And all executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, such sale to be had in the same manner as provided by statute for

the sale of lands of decedents to pay debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

§ 11. Provides that foreign executors or administrators shall not transfer assets within the state without paying the tax and that trust companies, safe deposit companies, banks, etc., shall not deliver securities of a decedent in their possession to an executor or administrator without retaining enough to pay the tax, interest and penalties unless the state treasurer shall consent in writing under a penalty of twice the tax and interest and gives the state treasurer the right to examine said securities.

§ 12. Provides that taxes shall be paid to general fund.

§ 13. Provides for the appointment of appraisers, notice to beneficiaries to fix the market value of property and compute like estates, remainders, annuities, etc., fixes appraiser's compensation and imposes a penalty for accepting fee or reward.

§ 14. Gives the probate court jurisdiction in inheritance tax cases.

§ 15. Provides for collection of delinquent taxes by the attorney-general who may employ counsel. [Repealed by L. 1917.]

§ 16. Provides for the enforcement of tax liens by the attorney-general.

§ 17. Provides for actions to quiet title and to declare that property is not subject to the lien of any tax under this or any former act.

§ 18. Provides that actions under sections 16 and 17 shall be commenced in the probate court.

§ 19. An act, entitled "An act to impose a tax based upon the right of succession to gifts, legacies and inheritances in certain cases, and to provide for the collection of such taxes," approved May 31, 1909, and all acts and parts of acts in conflict with this act are hereby expressly repealed; *provided*, nothing in this act shall be construed to affect or prevent the collection of any inheritance tax which may have become due and payable, and has not yet been paid under the laws in force prior to the passage of this act.

§ 20. Whereas, it is necessary for the immediate preservation of the public peace, health and safety that this act becomes a law immediately; therefore, be it enacted that this act take effect and be in force from and after its passage.

The Act of 1917 adds the following procedure provisions:

§ 3. There is hereby created for a term of twelve (12) years an office to be known as the inheritance tax attorney, for the state of Arkansas, and the governor, with the advice and consent of the Senate shall appoint some person learned in the law, who shall be inheritance tax attorney for the state, for a term of two years, and who shall take and subscribe to the oath of office prescribed by the constitution of this state for officers. The inheritance tax attorney shall have the power to file complaint in the name of the state in the probate court of any county having jurisdiction of the estate, from which any taxes under this act may be due or owing, against the administrator, or executor of such estate, or against the heirs, legatees, beneficiaries or other persons having or claiming to have any interest in said estate, if there is no administrator or executor, alleging that the inheritance tax is due and unpaid, or that the value of said estate upon which the inheritance tax is owing, is unknown. Upon filing of the complaint, a summons shall be issued and served upon the defendants and the case shall stand for trial at the next regular or adjourned term of the court; provided the term shall not begin within ten days from the service of the summons. The case shall be tried before the probate judge without a jury, upon oral testimony or depositions, and he shall render judgment in favor of the state for whatever sum he may find is due by said estate as inheritance taxes. An appeal may be taken from the judgment of the probate court to the circuit court for the plaintiff, without bond, by the inheritance tax attorney filing his motion and prayer therefor, either in the probate court or with the clerk of the circuit court. The defendants, or any of them, may appeal to the circuit court in the same manner as appeals are now taken, or may hereafter be taken, from the probate court.

§ 4. The inheritance tax attorney may examine under oath in the proceeding provided for in section 2 of this act, the administrator, executor,

heirs, legatees, beneficiaries or other person having, or claiming to have any interest in the estate, or any other person having any knowledge of the property of the estate or its value. When it has been determined how much tax is due under this act, the inheritance tax attorney shall certify the amount thereof to the state treasurer, and all taxes shall be paid direct to the treasurer of the state.

§ 5. The inheritance tax attorney shall devote his entire time to the discharge of the duties of his office and shall not engaged in any occupation or business interfering or inconsistent with the duties of his office. He shall receive as his salary the sum of three thousand dollars (\$3,000.00) per annum, payable as other salaries are paid; and in addition thereto, his necessary traveling expenses, which shall be itemized, verified and filed with the auditor of state each month, and when so filed, the auditor shall draw his warrant, separate from any salary warrant, from the amount of his traveling expenses, which shall be deducted from any taxes collected under this act before the same is credited to the general revenue fund.

§ 6. The inheritance tax attorney shall be provided with suitable and necessary offices, furniture, supplies and stationery, and shall also be allowed one stenographer who shall be paid a salary not to exceed seventy-five dollars (\$75.00) per month, to be paid by the state as other salaries are paid.

§ 7. If any non-resident of this state shall die leaving any property in this state subject to taxation under this act, the probate court of any county wherein any of such decedent's property is situated, shall, on petition of inheritance tax attorney, appoint some suitable person administrator of the estate of such decedent, or require the public administrator to take charge of such property until the amount of inheritance tax owing under this act is determined and paid.

§ 8. The probate judge shall not approve the settlement of any administrator or executor until the inheritance taxes due under the inheritance tax laws is paid.

§ 9. Any action provided for by the inheritance tax laws of this state may be brought at any time before the estate is fully administered.

§ 10. Section 15 of Act No. 197 of the Acts of 1913 and all laws and parts of laws in conflict herewith are hereby repealed, and this act being necessary for the immediate preservation of the public peace, health and safety an emergency is hereby declared to exist, and this act shall be in force and effect from and after its passage.

Prior Statutes: L. 1901, Act 156, p. 295; L. 1903, Act 89, p. 153; L. 1907, Act 345, p. 852.; L. 1909, Act 303, p. 904.

## CALIFORNIA

Taxes property of non-residents within the State.

TABLES OF GRADED RATES UNDER STATUTES OF 1911, 1913, 1915 AND 1917.

Under L. 1911; in effect July 1, 1911.

CLASSIFICATION OR INDICATION OF RELATIONSHIP	Property exemption	Application of rates to value of inheritance or bequest <sup>a</sup>				
		On excess after deduction of exemption from \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child.	Widow or minor child, others, \$10,000.	1%	2%	3%	4%	5%
Brother, sister, or descendant of either, wife or widow of a son, husband of a daughter.	\$2,000	2%	4%	6%	8%	10%
Uncle, aunt, or descendant of either.	\$1,500	3%	6%	9%	12%	15%
Grand uncle, grand aunt, or descendant of either.	\$1,000	4%	8%	12%	16%	20%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate.	\$500	5%	10%	15%	20%	25%

## INHERITANCE TAXATION

TABLE OF RATES AND EXEMPTIONS UNDER LAW OF 1913.  
In effect August 15, 1913.

CLASSIFICATION OR INDICATION OF RELATIONSHIP	Property exemption	Application of rates to values of inheritance or bequests					
		On excess after deduction of exemption from \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$250,000	\$250,000 to \$500,000	In excess of \$1,000,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child.	Widow or minor child, \$24,000; others, \$10,000	1%	2%	3%	4%	5%	10%
Brother sister, or descendant of either, wife or widow of a son husband of a daughter.	\$2,000	2%	4%	6%	8%	10%	15%
Uncle, aunt, or descendant of either.	\$1,500	3%	6%	9%	12%	15%	20%
Grand uncle, grand aunt, or descendant of either.	\$1,000	4%	8%	12%	16%	20%	25%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate.	\$500	5%	10%	15%	20%	25%	30%

TABLE OF RATES AND EXEMPTIONS UNDER AMENDMENT OF 1915.  
In effect August 8, 1915, and continued by ch. 539, L. 1917.

CLASSIFICATION OR INDICATION OF RELATIONSHIP	Property exemption	Application of rates to value of inheritance or bequests					
		On excess after deduction of exemption from \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$200,000	\$200,000 to \$500,000	In excess of \$1,000,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child.	Widow or minor child, \$24,000; others, \$10,000	1%	2%	4%	7%	10%	15%
Brother, sister, or descendant of either, wife or widow of a son, husband of a daughter.	\$2,000	3%	6%	9%	12%	15%	25%
Uncle, aunt, or descendant of either.	\$1,000	4%	8%	10%	15%	20%	30%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate, excepting charities, exempted by section 6, subdivision 1	\$500	5%	10%	15%	20%	25%	30%

California has adopted an entirely new statute. Approved May 23, 1917, but it does not change the rates established in 1915 and shown in the foregoing table.

The new statute is in full as follows:

#### CHAPTER 589.

**An Act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and by any act hereby repealed and for suits to quiet title against claims of liens arising hereunder, or under an act hereby repealed, to be known as the "inheritance tax act"; and to repeal chapter five hundred ninety-five of the laws of the session of the legislature of California of 1913, approved June 16, 1913, known as the "inheritance tax act," and all amendments thereto, and to repeal all acts and parts of acts in conflict with this act.**

In effect July 27, 1917.

*The people of the State of California do enact as follows:*

SECTION 1. (1) This act shall be known as the "inheritance tax act."

(2) The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heir, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state; *provided*, that for the purpose of this act the one-half of the community property which goes to the surviving wife, on the death of the husband, under the provisions of section one thousand four hundred two of the civil code, shall not be deemed to pass to her as heir to her husband, but shall, for the purpose of this act, be deemed to go, pass, or be transferred to her for valuable and adequate consideration and her said one-half of the community shall not be subject to the provisions of this act; *provided, further*, that in case of a transfer of community property from the husband to the wife, within the meaning of subdivision (3) or (5) of section two of this act, one half of the community property so transferred shall not be subject to the provisions of this act; *and provided, further*, that the presumption that property acquired by either husband or wife after marriage is community property, shall not obtain for the purpose of this act as against any claim by the state for the tax hereby imposed; but the burden of proving such property to be community property shall rest upon the person claiming the same to be community property.

(3) The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described.

(4) The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor.

(5) The words "county treasurer" and "inheritance tax appraiser," as used in this act, shall be taken to mean the treasurer or the inheritance tax appraiser of the county of the superior court having jurisdiction as provided in section fifteen of this act.

§ 2. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom in trust or otherwise, to persons, institutions or corporations, not herein-after exempted, to be paid to the treasurer of the proper county, as herein-after directed, for the use of the state, said taxes to be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions, hereinafter granted, in the following cases:

(1) When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seized or possessed of the property while a resident of the state, or by any order of court setting apart property pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.



(2) When the transfer is by will or intestate laws of property within this state and the decedent was a nonresident of the state at the time of his death, or by any order of court setting apart property pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.

(3) When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this state, by deed, grant, bargain, sale, assignment or gift, made without valuable and adequate consideration (i. e., a consideration equal in money or in money's worth to the full value of the property transferred):

(a) In contemplation of the death of the grantor, vendor, assignor or donor, or,

(b) Intended to take effect in possession or enjoyment at or after such death.

When such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

(4) The words "contemplation of death," as used in this act, shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in nowise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person making a gift *causa mortis*; and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of property transferred by testate or intestate laws.

(5) Whenever property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or other institutions or depositaries in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons, the right of the surviving joint tenant or joint tenants, person or persons to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this act in the same manner as though the whole property to which such transfer relates belonged absolutely to the deceased joint tenant or joint depositor and had been devised or bequeathed to the surviving joint tenant or joint tenants, person or persons, by such deceased joint tenant or joint depositor by will, excepting therefrom such part thereof as may be proved by the surviving joint tenant or joint tenants to have originally belonged to him or them and never to have belonged to the decedent.

(6) Whenever any person, trustee or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person, trustee or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons, trustees or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(7) Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devise, or residuary legacies exceeds what would be a reasonable compensation for their services, such excess over and above the exemptions herein provided for shall be liable to said tax; and the superior court in which the probate proceedings are pending shall fix the compensation.

(8) Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any

person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had been acquired such increase from the person from whom the title to their respective estates or interests is derived.

(9) When more than one transfer within the meaning of any of the preceding subdivisions of this section has been made, either before or after the passage of this act, by a decedent to one person, the tax shall be imposed upon the aggregate market value of all of the property so transferred to such person in the same manner and to the same extent as if all of the property so transferred were actually transferred by one transfer.

(10) In determining the market value of the property transferred, no deduction shall be made for any inheritance tax or estate tax paid to the government of the United States.

§ 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; *provided*, that said lien shall be limited to the property chargeable therewith, and the person to whom the property passes or is transferred, and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The provisions of the Code of Civil Procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law; *provided*, that unless sued for within five years after they are due and legally demandable, such taxes, or any taxes accruing under any act herein repealed, shall cease to be a lien as against any *bona fide* purchaser of said property; and *provided*, that no such lien shall cease within two years from the date of the passage of this act.

§ 4. When the property of any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal ancestor, lineal issue of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent (*provided, however*, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter), or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of a descendant of a brother or sister of a decedent, a wife or widow of a son, or the husband of a daughter of the decedent at the rate of three per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

§ 5. (1) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision one of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, two per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, four per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, seven per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, ten per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twelve per centum of such excess.

(f) Upon all in excess of one million dollars, fifteen per centum of such excess.

(2) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision two of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, six per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, nine per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, twelve per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, fifteen per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twenty per centum of such excess.

(f) Upon all in excess of one million dollars, twenty-five per centum of such excess.

(3) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision three of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, eight per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, ten per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, fifteen per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, twenty per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twenty-five per centum of such excess.

(f) Upon all in excess of one million dollars, thirty per centum of such excess.

(4) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision four of section four exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, ten per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, fifteen per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, twenty per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, twenty-five per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars, thirty per centum of such excess.

§ 6. The following exemptions from the tax are hereby allowed:

(1) All property transferred to societies, corporations, and institutions now or hereafter exempted by law from taxation, or to any public corporation, or to any society, corporation, institution, or association of persons

engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust for or to be devoted to any charitable, benevolent, educational, or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof, shall be exempt; *provided, however*, that such society, corporation, institution or association be organized or existing under the laws of this state or that the property transferred be limited for use within this state.

(2) Property of the clear value of twenty-four thousand dollars, transferred to the widow or to a minor child of the decedent, and of ten thousand dollars transferred to each of the other persons described in the first subdivision four, shall be exempt.

(3) Property of the clear value of two thousand dollars, transferred to each of the persons described in the second subdivision of section four, shall be exempt.

(4) Property of the clear value of one thousand dollars, transferred to each of the persons described in the third subdivision of section four, shall be exempt.

(5) Property of the clear value of five hundred dollars, transferred to each of the persons and corporations described in the fourth subdivision of section four, shall be exempt.

§ 7. (1) All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; *provided*, that if said tax is paid within six months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators, or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond for the payment of said tax, together with interest.

(2) The penalty of ten per cent per annum imposed by subdivision (1) of this section for the nonpayment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, can not be settled at the end of eighteen months from the death of the decedent; but in such cases seven per cent per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed, after which ten per cent interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation.

§ 8. (1) When any grant, gift, legacy, devise or succession upon which a tax is imposed by section two of this act shall be an estate, income, or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion, or other expectancy, real or personal, the entire property or fund by which such estate, income, or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in section sixteen or seventeen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid.

(2) In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; *provided, however*, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall

be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section eleven hereof upon order of the court having jurisdiction.

(3) When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended, or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; *provided, however*, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act; such return of overpayment shall be made in the manner provided by section eleven of this act, upon order of the court having jurisdiction; *provided*, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax or the trustees thereof may elect not to pay the same until such person or persons, or body politic or corporate beneficially interested in such property shall come into the actual possession or enjoyment thereof, and in that case such person or persons or body politic or corporate or trustees shall execute a bond to the people of the State of California in a penalty of twice the amount of said tax with such sureties as the said superior court may approve, conditioned for the payment of said tax and interest thereon at the rate of seven per cent. per annum commencing at the expiration of eighteen months from the death of the decedent at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, and conditioned further, that if said bond be not renewed and the returns made as herein provided, the amount of said tax and interest thereon shall immediately become due and payable. Said bond shall be filed in the office of the county clerk of the proper county and a certified copy thereof shall be immediately transmitted to the state controller; *provided, further*, that such person or persons or body politic or corporate, or trustees, shall enter into such security within a period of ninety days after the entry of the order or decree fixing the inheritance tax charged against such transfer, or within such period thereafter as the court may in its discretion permit, and shall make a full and verified return of such property to said court and file the same in the office of the county clerk within one year from the date of such order or decree fixing tax, and at such times thereafter as the court on the application of the state controller may require, and renew such security every five years after the date of the approval thereof. Upon the approval of said bond as herein provided, said tax shall cease to be a lien upon the property so transferred. If such security shall not be renewed before the expiration of each five-year period, said bond shall immediately become due and payable and if the same be not paid forthwith, the attorney general shall file an action in the name of the people of the state on the relation of the controller, to recover the same and the penalties thereunder and no demand for payment shall be necessary before the institution of such suit. Whenever it shall be made to appear to the satisfaction of the court that any surety on such bond or undertaking has for any reason become insufficient, the court may on motion of the state controller, after such notice to such person or persons, body politic or corporate, or trustees as the court may require, order the giving of a new undertaking with sufficient sureties in lieu of such insufficient undertaking. In case such new undertaking so required shall not be given within the time required by such order, or in case the sureties thereon fail to justify thereon when required, all rights obtained by the filing of such

original undertaking, or subsequent undertaking, shall cease and the amount of said tax and interest thereon shall immediately become due and payable.

(4) Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

(5) Where an estate or interest can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

(6) The value of every future, or contingent or limited estate, income or interest, shall, for the purposes of this act be determined by the rule, methods and standards of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interest and contingencies shall be five (5) per cent per annum. The insurance commissioner shall without a fee on the application of any superior court or of any inheritance tax appraiser determine the value of any future or contingent estate, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's application or other facts to him submitted by said appraiser or said court and certify the same in duplicate to such court or appraiser, and his certificate thereof shall be conclusive evidence that the method of computation therein is correct. When an annuity or a life estate is terminated by the death of the annuitant or life tenant, and the tax upon such interest has not been fixed and determined, the value of said interest for the purpose of taxation under this act shall be the amount of the annuity or income actually paid or payable to the annuitant or life tenant during the period for which such annuitant or life tenant was entitled to the annuity or was in possession of the life estate.

§ 9. (1) Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

(2) All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

(3) Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending.

§ 10. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor, in triplicate, one copy of which he shall deliver to the person paying said tax, and the original and one copy thereof he shall immediately send to the controller of state, whose duty

it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office, and immediately transmit to the clerk of the court fixing such tax. And an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless a receipt so sealed and countersigned by the controller, or a copy thereof, certified by him, shall have been filed with the court. Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

§ 11. (1) If any debts shall be proved against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the superior court having jurisdiction, on notice to the state controller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer; or if such tax has been paid to such county treasurer, such officer shall refund out of any inheritance tax moneys in his hands or custody such equitable proportion of the tax, and credit himself with the same in the account required to be rendered by him under this act.

(2) Where it shall be proved to the satisfaction of the superior court that deductions for debts were allowed upon the appraisal, since proved to have been erroneously allowed, it shall be lawful for such superior court to enter an order assessing the tax upon the amount wrongfully or erroneously deducted.

(3) If, after the payment of any tax in pursuance of an order fixing such tax, made by the superior court having jurisdiction, such order be modified or reversed by the superior court having jurisdiction within two years from and after the date of entry of the order fixing the tax, or be modified or reversed at any time on an appeal taken therefrom within the time allowed by law on due notice to the state controller, the county treasurer shall refund to the executor, administrator, trustee, person or persons by whom such tax was paid, the amount of any moneys paid or deposited on account of such tax in excess of the amount of tax fixed by the order modified or reversed, out of any inheritance tax moneys in his hands or custody, and credit himself with the same in the account required to be rendered by him to the controller on his semi-annual settlement; but no application for such refund shall be made after one year from such reversal or modification, unless an appeal shall be taken therefrom, in which case no such application shall be made after one year from the final determination on such appeal or of an appeal taken therefrom, and the representatives of the estate, legatees, devisees or distributees entitled to any refund under this section shall not be entitled to any interest upon such refund, and the state controller shall deduct from the fees allowed by this act to the county treasurer the amount theretofore allowed him upon such overpayment.

(4) When any amount of said tax shall have been erroneously paid, the superior court having jurisdiction, on application after notice to the state controller, and on satisfactory proof to it, shall by order require the county treasurer to refund and pay to the executor, administrator, trustee, person or persons who had paid any such tax in error the amount of such tax so erroneously paid; *provided*, that all applications for such repayment of such tax so erroneously paid shall be made within one year of the date of the entry of the order fixing tax or of the decree of final distribution of the estate. Such refund shall be made by said treasurer out of any inheritance tax moneys in his hands or custody and he shall credit himself with the same in the account required to be rendered by him to the controller on semi-annual settlement; and the state controller shall deduct from the fees allowed by this act to the county treasurer the amount theretofore allowed him upon such erroneous payment.

(5) This section, as amended, shall apply to appeals and proceedings now pending and taxes heretofore paid in relation to which the period of one year from such reversal or modification has not expired when this section, as amended, takes effect.

§ 12. (1) Whenever the state controller shall have reasonable cause to believe that a tax is due under the provisions of this act, upon any transfer of any property, and that any person, firm, institution, company, association or corporation has possession, custody or control of any books, accounts, papers or documents relating to or evidencing such transfer, the state controller or inheritance tax attorney, or any assistant inheritance tax attorney of the inheritance tax department, is hereby authorized and empowered to inspect the books, records, accounts, papers and documents of any such person, firm, institution, company, association or corporation including the stock transfer book of any corporation, for the purpose of acquiring any information deemed necessary or desirable by said state controller or such inheritance tax attorney or assistant inheritance tax attorneys, for the proper enforcement of this act, and for the collection of the full amount of tax which may be due the state hereunder. Any and all information acquired by said state controller or said inheritance tax attorney or assistant inheritance tax attorneys shall be deemed and held by said state controller and said inheritance tax attorney and assistant inheritance tax attorneys and each of them, as confidential, and shall not be divulged, disclosed or made known by them or any of them except in so far as may be necessary for the enforcement of the provisions of this act. Any controller or ex-controller, or inheritance tax attorney or ex-inheritance tax attorney, or assistant inheritance tax attorney, or ex-assistant inheritance tax attorney, who shall divulge, disclose or make known any information acquired by such inspection and examination aforesaid, except in so far as the same may be necessary for the enforcement of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than ninety days, or both.

(2) Any officer or agent of any firm, institution, company, association or corporation having or keeping an office within this state, who has in his custody or under his control any book, record, account, paper or document of such firm, institution, company, association or corporation, and any person having in his custody or under his control such book record, account, paper or document who refuses to give to the state controller, or said inheritance tax attorney, or any of said assistant inheritance tax attorneys, lawfully demanding, as provided in this section, during office hours to inspect or take a copy of the same or any part thereof, for the purposes hereinabove provided, a reasonable opportunity so to do, shall be liable to a penalty of not less than one thousand dollars nor more than twenty thousand dollars, and in addition thereto shall be liable for the amount of the taxes, interest and penalties due under this act on such transfer, and the said penalties and liabilities for the violation of this section may be enforced in an action brought by the state controller in any court of competent jurisdiction.

§ 13. (1) No corporation organized or existing under the laws of this state, shall transfer on its books or issue a new certificate for any share or shares of its capital stock belonging to or standing in the name of a decedent or in trust for a decedent or belonging to or standing in the joint names of a decedent and one or more persons, without the written consent of the state controller or person by him in writing authorized to issue such consent.

(2) No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control or custody or under partial control or partial custody securities, deposits, assets or property belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal



representatives, agents, deputies, attorneys, trustees, legatees, heirs, successors in interest of said decedent or to any other person or persons or to the survivor or survivors when held in the joint names of a decedent and one or more persons or under their order or request, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed thereon under this act and unless notice of the time and place of such delivery or transfer be served upon the state controller and county treasurer at least ten days prior to said delivery or transfer; *provided*, that the state controller, or person by him in writing authorized so to do, may consent in writing to said delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation hereunder to give such notice or to retain any portion of said securities, deposits or other assets in their possession or control. And it shall be lawful for the state controller or county treasurer, personally or by representatives, to examine said securities, deposits or assets at the time of said delivery or otherwise.

(3) Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons, liable to a penalty of not more than twenty thousand dollars, and in addition thereto said safe deposit company, trust company, corporation, bank or other institution, person or persons shall be liable for the amount of the taxes, interest and penalties due under this act on said securities, deposits, or other assets above mentioned, and said penalties and liabilities of said safe deposit company, corporation, bank or other institution, person or persons for the violation of this section may be enforced in an action brought by the state controller in any court of competent jurisdiction.

§ 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. Every such inheritance tax appraiser (in addition to any fees paid him as appraiser under section one thousand four hundred forty-four of the Code of Civil Procedure) shall be paid for his services out of any inheritance tax moneys in the hands of the treasurer of the county in which he may be acting, a reasonable compensation, to be fixed by the superior court of said county, or a judge thereof, and, together with said compensation, said appraiser shall be allowed his actual and necessary traveling and other incidental expenses, and the fees paid such witnesses as he shall subpoena before him, said expenses and fees to be allowed by said superior court or a judge thereof; *provided*, that any claim for any such services or expenditure, must before payment, first receive the approval of the state controller; *and provided, further*, that in any probate proceeding in which the executor or administrator shall have failed to have had the inheritance tax appraiser act as one of the appraisers under section one thousand four hundred forty-four of the Code of Civil Procedure and to have paid him his fees therefor, the expense of making the inheritance tax appraisement in this act provided for shall be paid out of said estate, and the executor or administrator thereof shall be liable for said fee. Any such appraiser who shall take any fee or reward, other than such as may be allowed him by law, from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail ninety days or both, and in addition thereto the court shall dismiss him from such service.

§ 15. The superior court in the county in which is situate the real property of a decedent, who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such nonresident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act; the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other; *provided*, that the superior court having acquired jurisdiction in probate of the estate of a decedent shall hear and determine in said

probate proceedings all questions in relation to any tax arising under the provisions of this act: (a) Upon property passing in said probate proceedings. (b) Upon any other property transferred, within the meaning of subdivision three of section two or any other provisions of this act, to any person, institution or corporation taking any property under and by virtue of said probate proceedings.

§ 16. (1) When any superior court, having jurisdiction in probate of the estate of any decedent, or a judge of such court, shall, in accordance with section one thousand four hundred forty-four of the Code of Civil Procedure, appoint the appraiser or appraisers in said section provided for, said superior court or judge thereof shall also at the same time designate and appoint an inheritance tax appraiser (unless such designation and appointment be previously made) to ascertain and report to said superior court the amount of inheritance tax due upon any property passing in said probate proceeding, or a lien thereon, or upon any other property transferred within the meaning of subdivision (3) of section two of this act, or under any other provision of this act, to any person, institution or corporation taking property under and by virtue of said probate proceedings, together with such other or additional information as shall assist said court in the determination of said tax. Thereupon said inheritance tax appraiser shall have all the powers of a referee of said superior court, and shall have jurisdiction to require the attendance before him of the executor or administrator of said estate, or any person interested therein, or any other person whom he may have reason to believe possesses knowledge of the estate of said decedent, or knowledge of any property transferred by said decedent within the meaning of this act, or knowledge of any facts that will aid said appraiser or the court in the determination of said tax. For the purpose of compelling the attendance of such person or persons before him, and for the purpose of appraising any property or interest subject to, or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the said inheritance tax appraiser is hereby authorized to issue subpoenas compelling the attendance of witnesses before him. Any person or persons who shall be served with a subpoena issued by said inheritance tax appraiser, to appear and testify or to produce books and papers, and who shall refuse and neglect to appear and testify or to produce books and papers relevant to such appraisement, as commanded in such subpoena, shall be guilty of a contempt of court. And he may examine and take the evidence of such witnesses or of such executor or administrator, or other person under oath concerning such property and the value thereof, and concerning the property or the estate of such decedent subject to probate, and concerning any transfer made by such decedent within the meaning of this act. Upon the completion of his inheritance tax appraisement in any probate proceeding, the inheritance tax appraiser shall make a report in writing to the superior court of the clear market value of the several interests in the estate of the decedent, and shall report the amount of inheritance or transfer tax chargeable against, or a lien upon such interests, acquired by virtue of said probate proceedings or by any transfer within the meaning of this act, to any person, institution or corporation acquiring any property by virtue of said probate proceedings together with such other facts as may advise the court in regard thereto, or which the court may require, and may return to said superior court such depositions as he may have had reduced to writing, exhibits, or other testimony or information taken before him, or submitted to him.

(2) Upon the filing of said report said appraiser shall mail a copy thereof to the state controller and the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceedings by causing notices to be posted in at least three public places in the county, one of which must be the place where the court is held, and in addition thereto shall mail to the state controller and to all persons chargeable with any tax in said report who have appeared in such proceeding, a copy of said notice. At any time after the expiration of ten days thereafter, if no objection to said report be filed, the said superior court or a judge thereof, may, without further notice give and make its order confirming

said report and fixing the tax in accordance therewith. At any time prior to the making of said order, any person interested in said proceeding (including the state controller) may file objections in writing to said report. Thereupon said superior court shall, by order, fix a time, not less than ten day thereafter, for the hearing thereof, and shall direct the clerk of said superior court to give such notice thereof as it shall deem necessary; *provided*, that a copy of such notice and of such objections shall be forthwith mailed to the state controller, county treasurer and inheritance tax appraiser. Upon the hearing of said objections, said court may make such order as to it may seem meet and proper in the premises.

(3) If, upon examination of the executor or administrator of said estate or other persons familiar with the affairs of such decedent, or from other information before him, it shall appear to the inheritance tax appraiser that there is no inheritance tax due out of said estate or a lien upon any property or interest therein, said appraiser may so certify to the superior court, and at any time thereafter, if no objection to said certificate shall have been filed, said superior court or a judge thereof may, without further notice, make an order or decree that there are no inheritance taxes due out of said estate or upon any interest therein or may make such different order as may to it seem meet in the premises. Such order shall be conclusive only as to such property as may have been returned in the inventory or inventory and appraisal in said probate proceedings.

§ 17. (1) If it shall appear to the superior court upon petition of the state controller that any transfer has been made within the meaning of this act, and the taxability thereof, and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof may be determined, said court shall issue a citation ordering and directing the persons who may appear liable therefor or known to own any interest in or part of the property transferred, to appear before said court or before an inheritance tax appraiser to be designated by said order at a time and place in said order named, not less than ten days nor more than one year from the date of such order, to be examined, under oath by said court or by said appraiser as the case may be, concerning said transfer and all facts connected therewith, and concerning the property transferred and the character and value thereof.

If said person or persons shall be directed to appear before said appraiser said appraiser shall, at the time and place in said order named, or at such time and place to which said appraiser may adjourn said hearing, proceed to examine said person or persons and such witnesses as said appraiser may subpoena before him, and for the purpose of said hearing, and for the purpose of ascertaining any facts concerning the taxability of said transfer or any taxes due on account of such transfer, said appraiser shall have the powers of a referee of said court, and, is hereby authorized to issue subpoenas compelling the attendance of witnesses before him, and to administer oath, and to take the evidence of such witnesses under oath concerning such property and the value thereof and concerning such transfer. Said appraiser shall report to said court his findings and conclusions in relation to said transfer and said tax, and may return to said court, any depositions, exhibits or other testimony or information taken before him or exhibited to him. The procedure subsequent to the filing of said report shall conform to subdivision (2) of section sixteen of this act.

Except as herein otherwise provided, the service of such citation and the time, manner and proof thereof, and the hearing and determination thereon, and the hearing and determination upon the facts returned in such report, and the enforcement of the determination or decree, shall conform to the provisions of chapter twelve, title eleven, part three of the Code of Civil Procedure, and the clerk of the court shall, upon the request of the state controller, furnish, without fee, one or more transcripts of such decree, and the same shall be docketed and filed by the county clerk of any county in the state, without fee, in the same manner and with the same effect as provided by section six hundred seventy-four of said Code of Civil Procedure for filing a transcript of an original docket.

The superior court may hear the said cause upon the relation of the parties and the testimony of witnesses and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases.

(2) Verified petitions may be filed by any interested party with the superior court alleging and admitting that a transfer within the meaning of this act has been made and the taxability thereof and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof, may be determined, and that the petitioner desires such determination and desires to pay said tax, if any be due. Upon the filing of such petition the superior court or a judge thereof shall by order designate and appoint an inheritance tax appraiser to ascertain and report to said court the amount of the inheritance tax, if any, due by said petitioner on account of such transfer, and shall fix a time and place, not less than ten days thereafter, for the hearing of said matter before said inheritance tax appraiser, a copy of which petition and order shall be forthwith mailed to the state controller, and shall refer said petition and said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said reference to said appraiser shall conform to the provisions of subdivisions (1) and (2) of section sixteen of this act.

In the event that final judgment is rendered in said proceeding, ascertaining and determining that no inheritance tax is due on account of said transfer or that the amount of the tax to which said transfer is liable, is less than twenty dollars the court shall, in addition to the amount of the tax, if any, include in such judgment and assess against the petitioner reasonable compensation for said inheritance tax appraiser, not exceeding the sum of ten dollars, and the necessary traveling and incidental expenses of said appraiser.

(3) Actions may be brought against the state by any interested person for the purpose of quieting the title to any property against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes nor chargeable with any tax under this act. No such action shall be maintained where any proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof may be determined. All parties interested in said transfer and in the taxability thereof shall be made parties thereto and any interested person who refuses to join as plaintiff therein may be made a defendant. Summons for the state in said action shall be served upon the state controller.

At any time after issue is joined in such action the court, on its own motion, or upon the motion of any interested party, may by order appoint and designate an inheritance tax appraiser to hear said matter and report to the court thereon and shall in such order fix a time and place for the hearing of said matter before said inheritance tax appraiser, and direct notice of such time and place to be given in such manner as the court shall deem proper, and shall refer said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said reference to said appraiser shall conform to the provisions of subdivisions (1) and (2) of section sixteen of this act.

Should the court determine that the property described in the complaint is subject to the lien of said tax and that said property has been transferred within the meaning of this act, the court shall award affirmative relief to the state in said action, and judgment shall be rendered therein in favor of the state, ascertaining and determining the amount of said tax, and the persons or persons liable therefor, and the property chargeable therewith or subject to lien therefor, and shall assess against such person or persons rea-

sonable compensation for said inheritance tax appraiser and his necessary traveling and incidental expenses.

(4) Actions under this section shall be commenced in the superior court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the superior court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

(5) No fee shall be charged said state controller by any public officer in this state for the filing or recording of any petition, lis pendens, decree or order, or for the taking of oaths or acknowledgments in any proceeding taken under this act; nor shall any undertaking be required from or costs charged against the state controller or the State of California in any such proceeding.

§ 18. The orders, decrees and judgments fixing tax or determining that no tax is due, mentioned in this act, shall have the force and effect of judgments in civil actions. Except as otherwise herein provided, the provisions of the Code of Civil Procedure relative to judgments, new trials, appeals, attachments and execution of judgments, so far as applicable, shall govern all proceedings taken under this act. Nothing in this section shall preclude the state from relief herein provided for, which may be inconsistent with the provisions of the Code of Civil Procedure.

§ 19. The treasurer of each county shall collect all taxes and moneys that may be due and payable under this act and pay the same to the state treasurer (excepting such moneys as he may pay out from time to time pursuant to the provisions of this act) and the state treasurer shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the controller, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the controller may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year he shall pay interest at the rate of ten per centum per annum.

§ 20. The treasurer of each county shall be allowed to retain, on all taxes paid and accounted for by him each year under this act, in addition to his salary or fees now allowed by law, three per centum of the first fifty thousand dollars so paid and accounted for by him, one and one-half per centum on the next fifty thousand dollars so paid and accounted for by him, and one-half of one per centum on all additional sums so paid and accounted for by him; *provided*, that no county treasurer shall be entitled to retain to his own use more than the sum of two hundred dollars out of the inheritance taxes paid on account of any transfer or transfers made by, or resulting from the death of, any one decedent, nor more than five thousand dollars out of the total inheritance taxes accounted for in any one year.

§ 21. The state controller, whenever he shall be cited as a party in any proceeding or action to determine any tax under this act provided, or whenever he shall deem it necessary for the better enforcement of this act to make any special employment to secure evidence of evasion of said tax, or to commence or appear in any proceeding or action to determine any tax hereunder, may, by and with the consent and approval of the attorney-general, make such special employment or designate and employ counsel or attorney in or out of this state to represent him on behalf of the state, and, by and with such consent of the attorney-general, he is hereby authorized to incur the necessary expense for such employment and any reasonable and necessary expense incident thereto. And the county treasurer is hereby authorized and directed to pay out of any funds which may be in his hands on account of this tax, on presentation of a sworn itemized account and on certificate of the state controller and attorney-general, all expenses incurred as in this section above provided, but no expense for such special employment or legal services up to and including the entry of the order of the court fixing the tax and the same becoming final, shall exceed ten per centum of the

tax and penalties collected; *provided*, that all reasonable and necessary expenses incurred, in any legal action or proceeding in any court of this state or on any appeal therefrom, other than attorney's fees, including expense of serving processes and printing and preparing of necessary legal papers, may be allowed and paid in the manner above provided, even though no tax be recovered in such action or proceeding, and the limitations herein made shall not apply thereto.

§ 22. All taxes levied and collected under this act, up to the amount of two hundred fifty thousand dollars annually, shall be paid into the treasury of the state, for the uses of the state school fund, and all taxes levied and collected in excess of two hundred fifty thousand dollars annually shall be paid into the state treasury to the credit of the general fund thereof.

§ 23. Every officer who fails or refuses to perform, within a reasonable time, any and every duty required by the provisions of this act, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this act, shall forfeit to the State of California the sum of one thousand dollars, to be recovered in an action brought by the attorney general in the name of the people of the state on the relation of the controller.

§ 24. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

§ 25. An act entitled "An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and by any act hereby repealed and for suits to quiet title against claims of liens arising hereunder or under an act hereby repealed to be known as the 'inheritance tax act'; to repeal an act entitled 'An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of liens arising hereunder'; to repeal an act entitled 'An act to establish a tax on collateral inheritances, bequests and devises, to provide for the collection and to direct the disposition of its proceeds,' approved March 23, 1893, and all amendments thereto and to repeal all acts and parts of acts in conflict with this act, approved March 20, 1905, and all amendments thereto, and all acts and parts of acts in conflict with this act,' approved April 7 1911"; approved June 16 1913, and all amendments thereto, and all acts and parts of acts in conflict with this act are hereby expressly repealed; *provided, however*, that such repeal shall in nowise affect any suit, prosecution or proceeding pending at the time this act shall take effect, or any right which the State of California may have at the time of the taking effect of this act, to claim a tax upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been commenced, and where no proceeding has been commenced to collect any tax arising under any act hereby repealed the procedure to collect such tax shall conform to the provisions hereof; nor shall such repeal affect any appeal, right of appeal in any suit pending, or orders fixing tax, existing in this state at the time of the taking effect of this act.

**Prior Statutes:** L. 1893, ch. 168; L. 1895, ch. 28; L. 1897, ch. 83; L. 1899, ch. 85; L. 1903, ch. 152 and ch. 228; L. 1905, chapters 85, 314, 325; L. 1909, ch. 637; L. 1911, chapters 394 and 395; L. 1913, ch. 595; L. 1915, chapters 189 and 198.

CALIFORNIA FORM — NONRESIDENTS.

[SEND IN DUPLICATE]

AFFIDAVIT FOR TRANSFER OF SECURITIES, DEPOSITS, ETC.

(Section 13, Inheritance Tax Act)

STATE OF ..... }  
COUNTY OF ..... } ss.

being duly sworn, says:

1. That ..... died ..... testate on or about ..... 19... at ..... a resident of ..... State of .....

2. That no administration of his estate has been commenced in the State of California (nor is about to be).

3. That the clear market value of decedent's property subject to the inheritance tax law of the State of California does not exceed \$....., and consists of:

(a) Personal property situate in California of the following kind and character and valued as follows:

(1) Bonds or notes present in California, or owed by California debtors: .....

(2) Shares of stock in California corporations: .....

(3) Deposits or other assets, or contents of safe deposit boxes standing in the name of decedent, or in the name of decedent and one or more persons: .....

(4) Other personal property: .....

(b) Real property situate in California (name county where situate and name of person in whose name title stands): .....

4. That said property of decedent passed to the following persons, whose relationship to decedent and the approximate value of whose interests are as follows:

Name	Address	Relationship	Value of Interest
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

5. That affiant had a general knowledge of the financial and physical condition of decedent for a number of years prior to his death, and thereupon answers the following questions (if affiant is not well acquainted with the financial and physical condition of decedent, as above stated, name person best acquainted therewith and his address): .....

Q. Did decedent make any transfer or transfers of any of his property without valuable and adequate consideration, in contemplation of his death, or intended to take effect in enjoyment at or after such death? (Give names of

transferee and brief description of property): .....

Q. Did decedent, during the latter part of his life, transfer the greater part or a large part of his property without valuable and adequate consideration, that is, as a gift or partly as a gift or to avoid probate? .....

Residing at .....

Subscribed and sworn to before me this ..... day of .....,  
19...

.....  
Notary Public in and for the County  
of ....., State of .....

## COLORADO.

Taxes all property of nonresidents within the State, including stock in domestic corporations.

TABLE OF GRADED RATES

CLASS OR RELATIONSHIP	Exemption	Application of rates to value of inheritance				
		Excess of exemption to \$100,000	\$100,000 to \$200,000	All in excess of \$200,000		
Father, mother, husband, wife, child, brother, sister, wife or widow of son, daughter's husband, adopted or mutually acknowledged child or lawfully born lineal descendant.	\$10,000	2%	3%	4%		
		Up to \$10,000	\$10,000 to \$20,000	\$20,000 to \$50,000	\$50,000 to \$100,000	All over \$100,000
Uncle, aunt, niece or nephew or lineal descendant of same.	\$500	3%	3%	4%	5%	6%
All others except charities exempted by section 4.	\$500	4%	5%	6%	8%	10%

## CHAPTER 136, L. 1913, BECAME A LAW MAY 14, 1913

Section 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to any person or persons, institution or corporation except as hereinafter exempted, in the following cases:

(a) When the transfer is by will or by intestate laws of this State, from any person dying seized or possessed of any such property while a resident of the State.

(b) When the transfer is by will or intestate laws of property within the State and the decedent was a nonresident of the State at the time of his death.

(c) When the transfer is made by a resident, or by a nonresident when such nonresident's property is within this State, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death; *provided* that any such gift, or any such deed, grant, bargain or sale without full and reasonable consideration and value made within one year from the date of the death of the grantor shall be deemed and held to have been made in contemplation of the death of the grantor.

(d) When any person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.



(e) Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person, institution, or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise power, taking effect at the time of such omission or failure.

Note.—The rest of this section fixes the rates of tax and exemptions as shown in the foregoing table.

§ 2. Provides for the computation of the value of life estate and remainders upon mortality tables on basis of 5% and for the immediate payment of the tax on remainders unless the beneficiary elects to file a bond for its payment when the remainder falls in. In that case a verified inventory must be filed with the county judge along with the bond within a year after death and the bond must be renewed every five years.

§ 3. Provides for the immediate taxation of contingent remainders at highest possible rate against trustees and that when remainders upon which the tax has been suspended shall fall in they shall be taxed at the "full undiminished value" following the New York statute. It provides further that:

"Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting."

§ 4. The following transfers of property shall be exempt from the inheritance tax, to wit: All transfers of property to the State of Colorado, or to any county, city, town or any other municipality, or for the use of public libraries for religious or charitable purposes exclusively, or for schools and colleges not for profit; *provided, however*, that the same be situated within this State, or the property be limited for use within this State.

§ 5. All taxes imposed by this act, shall be due and payable at the death of the decedent, except as hereinafter provided. If such tax is paid within six months from the accruing thereof, a discount of 5% shall be allowed and deducted therefrom. If such tax is not paid within one year from the accruing thereof, interest shall be charged and collected thereon at the rate of 10% per annum from the time the tax accrued; and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall upon petition of the Attorney-General to the County Court, be required to give a bond in the form and to the effect prescribed in section 2 of this act, for the payment of said tax, together with interest.

§ 6. Requires executors or administrators to deduct the tax from money legacies or shares, to collect the tax from beneficiary of any specific legacy of property before delivery, makes the tax a lien on real estate and provides for its sale. In case of legacy of property for a limited period he shall make an application to the court if necessary to apportion the tax among the beneficiaries.

§ 7. Makes executors and administrators personally liable for the tax and gives power of sale in the same manner as to pay debts.

§ 8. Requires payment of tax to State Treasurer who gives a voucher which must be produced before an executor or administrator is entitled to a final accounting.

§ 9. Provides that no tax shall be paid except upon an assessment order from the proper County Court and for fees of the court clerk for entering the order.

§ 10. Requires executors and administrators to file with the Attorney-General, within three months of appointment, a sworn statement of all property of the deceased, a false statement being perjury.

§ 11. Provides for proportionate refund of tax on legacies where debts have been proved after distribution if the tax has not been paid into the State treasury.

§ 12. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations of any domestic or foreign corporation doing business within this State, standing in the name of, or in trust for, a decedent, resident or nonresident, not exempt from taxation under section one hereof the tax shall be paid to the State Treasurer on the transfer thereof. No corporation or other institution, person or persons, holding, or controlling the transfer of securities or assets of a decedent, resident or nonresident, nor any corporation in which such decedent held stock at the time of his decease, shall deliver or transfer the same to the executors, administrators, trustees, heirs or legatees of said decedent, or upon their order or request unless notice in writing of the time and place of such intended transfer or delivery be served upon the appraiser appointed under this act at least ten days prior to such transfer or delivery; nor shall any corporation, institution, person or persons, transfer or deliver any securities or assets of the estate of a nonresident decedent without first obtaining the written consent thereto of the Attorney-General who shall as a condition of such consent, require that a sufficient amount or portion of such security or assets be retained to pay any tax, and the interest thereon, which may thereafter be assessed upon the transfer of such property under the provisions of this act or any amendment thereof. And it shall be lawful for the said appraiser or Attorney-General to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax and interest as herein provided, shall render such corporation or other institution, person or persons, liable to the payment of the tax and interest due upon the transfer of said securities or assets, in pursuance of the provisions of this act, and in addition thereto, or in the absence of any tax, to a penalty of one thousand dollars. The payment of such tax and interest and penalty, or either, may be enforced against the corporation, institution or person in the same way as the liability of legatees, or legal representatives, or may be collected by a civil action by the Attorney-General brought in any court of competent jurisdiction. The terms "corporation" and "institution" are defined to include corporations generally, foreign or domestic, which are qualified to do business in this State, and also all banks, trust companies, safe deposit companies or other corporate or noncorporate institutions occupying fiduciary relations. The term "securities or assets" shall include stocks, bonds, notes, securities, choses in action, and other personal property or the evidence thereof; and as applied to banks or similar organizations or persons, shall include deposits or other funds or papers held in storage, deposit or trust; and as to safe deposit companies, the contents or control of safe deposit boxes, and as to corporations of institutions generally shall include shares in, or registered bonds of, or other interests, in the corporation or institution transferring. Assets or securities, including safe deposit boxes, shall be considered the property of the decedent if held by him jointly with one or more other persons, or in any other qualified or limited sense, so long as the ownership possesses a pecuniary or proprietary value.

A fee of ten dollars shall be charged and collected for each such examination, whether such transfer be found to be taxable or not, provided that only one such fee shall be charged against any estate. Said fee shall be paid into the inheritance tax fund.

§ 13. Provides for the appointment of an inheritance tax appraiser and two deputies to appraise estates upon due notice; for an appeal to the County Court and rehearing and for a further appeal to the District Court upon filing a bond to pay costs if the appeal be taken by the estate. If no letters have been issued within sixty days from death the Attorney-General may apply for them.

§ 14. If satisfied that an estate is not liable to tax the appraiser may make a certificate to that effect which is binding on the State except as to after discovery property.

§ 15. If the appraiser fails to act within a year the executor or administrator who has duly filed his sworn statement of assets may move on due notice to the Attorney-General and the appraiser to have the County Court appraise the estate or declare it exempt.

§ 16. Provides a penalty for the acceptance of a fee by appraiser or his deputy.

§ 17. Gives jurisdiction in tax proceedings to the County Court having probate jurisdiction.

§§ 18 and 19. Provide for proceedings by the Attorney-General to collect delinquent taxes.

§ 20. Provides for quarterly reports by county judge and county clerk of estates liable to tax.

§ 21. Requires the Secretary of State to furnish the County Courts with books for the keeping of transfer tax records.

§ 22. Requires the State Treasurer to furnish copy of receipts of transfer taxes on payment of a fee of fifty cents.

§ 23. Authorizes the Attorney-General to file a caveat in any proceeding pending for the settlement of an estate where he thinks a transfer tax may be due, in which case no decree can be entered unless the tax receipt is produced.

§ 24. Provides for the appointment of a special guardian for an infant in transfer tax proceedings.

§ 25. Provides that the Attorney-General and State Treasurer may compromise uncertain and unliquidated tax claims.

§ 26. The Attorney-General, with the approval of the Governor, State Treasurer and auditors, may expend not to exceed \$2,000 a year for information from persons outside the State regarding transfers taxable under Colorado statute.

§ 27. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that this act shall not operate to release or waive or otherwise alter any tax or taxes which may be approved under the provisions of any prior act.

§ 28. The General Assembly hereby declares this law is necessary for the immediate preservation of the public safety.

§ 29. In the opinion of the General Assembly an emergency exists, therefore this act shall be in full force and effect from and after its passage.

**Prior Statutes:** L. 1901, ch. 94; L. 1902, ch. 3; L. 1907, ch. 214; L. 1909, ch. 193.

## CONNECTICUT.

Taxes real estate and tangible property within the State of nonresidents with distributive shares and exemptions proportioned to the entire estate, and shares of stock in domestic corporations under 1919 amendment.

TABLE OF GRADED RATES AS TO RESIDENT

CLASS OR RELATIONSHIP	Exemption, only one allowed to each class	In excess of exemption up to \$25,000	\$25,000 to \$50,000	\$50,000 to \$250,000	\$250,000 to \$1,000,000	In excess of \$1,000,000
<b>CLASS A</b> Parent, grandparent, husband, wife, lineal descendant, adopted child, adoptive parent, and lineal descendant of adopted child.	\$10,000	1%	1%	2%	3%	4%
<b>CLASS B</b> Husband or wife or a child, any step-child, brother or sister of the half or full blood and the descendants of such brother or sister.	\$3,000	3%	5%	6%	7%	8%
<b>CLASS C</b> All others..... Except charitable exemptions prescribed by section 3.	\$500	5%	5%	6%	7%	8%

NOTE.—As to non-residents, vide section 7.

## CHAPTER 332, L. 1915, BECAME A LAW MAY 19, 1915.

(As amended by chap. 356, L. 1917. See amendment, chap. 283, L. 1919, at end of act, as to nonresidents.)

Section 1. The words "choses in action," as used in this act, shall include deposits in banks, bonds, notes, credits and evidence of debt, but shall not include shares of stock of any corporation.

§ 2. An inventory of all the property of every deceased person and insolvent debtor except real estate situate outside the State of Connecticut, duly appraised, shall be made and sworn to by the executor, administrator or trustees and by him filed in the probate court having jurisdiction of the estate of such deceased person or insolvent debtor within two months after the acceptance of the bond or other qualification of such fiduciary provided the inventory and appraisal of the estate of any nonresident decedent shall include only such interest as such decedent had at the time of his death in real estate and tangible personal property situated in this State. Such court may, for cause shown, extend the time of filing such inventory to not exceeding four months from the qualification of the fiduciary. Such inventoried property shall be appraised at its fair market value by two or more disinterested persons under oath, appointed by such court. Whenever the estate of any deceased person consists only of cash on hand or on deposit in banks, or both, no appraisal thereof need be made and the fiduciary shall enter in the inventory the amount of such cash and such deposits as the value thereof. If any fiduciary shall fail to file in such court an inventory and appraisal as hereinbefore required within the time limited as aforesaid, such court may cite such fiduciary to appear at a time and place therein stated and show cause why he should not be removed, and unless sufficient cause be shown and an inventory and appraisal be forthwith filed, such court shall remove such fiduciary and appoint a successor to complete the administration of such

estate. If the estate of any deceased person be appraised for more than five hundred dollars the court of probate shall, within ten days after the filing in such court of such inventory or appraisal, cause a certified copy of the same, with the address of the fiduciary endorsed thereon, to be delivered to the tax commissioner. Within sixty days after the receipt of such copy by the tax commissioner, he or any party interested may file in such court a statement in writing setting forth in detail such objections as he may have to the acceptance of such inventory or appraisal and at the same time shall send a copy thereof to the executor or administrator, and if such objection be filed by the executor, administrator or an interested party, a copy shall be at the same time sent to the tax commissioner by the person filing such objection. Upon the filing of such objection, such court shall order a hearing on the acceptance of such inventory and appraisal to be had within sixty days and not less than fifteen days thereafter, and cause notice of the time and place of such hearing to be forthwith given to the tax commissioner and the executor or administrator of the estate. Such court upon such hearing shall hear such objections and determine the fair market value of any inventoried property, the appraised value of which has been objected to, and may order such executor, administrator or trustee to amend such inventory or appraisal in any way that it shall find proper, and may accept the same as amended. If no objection to such inventory or appraisal be filed as aforesaid, such inventory and appraisal may thereupon be accepted by such court. Such court may tax the costs incident to the proceedings on the filing of such objections, whether the same be heard or withdrawn, in favor of the prevailing party. The court of probate shall, within ten days after the filing of the inventory of any estate of the appraised value of more than ten hundred dollars, file with the tax commissioner a certified copy of the application for administration or probate of the will of such decedent, with a certified copy of the will. If, in the opinion of the judge of said court, any estate is not subject to succession or inheritance tax, he shall send to the tax commissioner with the copy of the inventory, a certificate to that effect, setting forth his reasons therefor, and unless the tax commissioner shall, within sixty days after the filing of such certificate, as hereinbefore provided, file an objection to such certificate, no tax shall be due from the estate inventoried as aforesaid, unless the appraised value of any item of the inventory be increased or additional property be thereafter discovered. The court of probate may, at any time, correct an error or mistake in such certificate. The value of the estate as set forth in the accepted inventory of an estate shall be the basis for computing the succession or inheritance tax. [As amended by chap. 356, L. 1917.]

§ 3. All property owned by any resident of this State at the time of his decease, and all real estate and tangible personal estate, not including stocks, bonds and choses in action within this State owned by a nonresident at the time of his decease, which shall pass by will or by the provisions of the general statutes relating to the distribution of intestate estates, and all such property of any decedent which shall pass by deed, grant or gift, made in contemplation of the death of the grantor or donor, or intended to take effect in possession or enjoyment at the death of such grantor or donor, shall be liable to a tax as hereinafter provided. All property passing to or in trust for the benefit of any corporation or institution located in this State which receives State aid, or for the use of a municipal corporation for public purposes within this State, and all gifts of paintings, picture books, engravings, bronzes, curios, bric-a-brac, arms and armor, and collections of articles of public interest, passing to any corporation or institution located in this State for preservation and free exhibition, shall be exempt from such tax. The provisions of this section shall not apply to real estate situated without the State of Connecticut. [As amended by chap. 356, L. 1917.]

§ 4. Provides that the court of probate shall have jurisdiction in transfer tax matters.

§ 5. The net estate for taxation purposes shall be ascertained by adding to the appraised value of the inventoried estate all gains made in reducing choses in action to possession, except income accruing after death, and deducting

therefrom the amount of claims paid, all funeral expenses and expenses of administration, allowance made for the support of widow and family of the decedent during the settlement of the estate, the amount at death of all unpaid mortgages not deducted in the appraisal of property mortgaged, and losses incurred during the settlement of the estate in the reduction of choses in action to possession, provided no such deduction shall be made for allowance for support of widow and family beyond the date upon which the tax hereby imposed becomes payable.

§ 6. Prescribes the graded rates and exemptions given in the foregoing table.

§ 7. When any real estate or tangible personal property in this State of any nonresident shall pass by such gift, devise, bequest, or under the provisions of the general statutes relating to distribution of intestate estates, the court of probate having jurisdiction thereof shall ascertain the proportion of the estate of such nonresident decedent, wherever situated, passing to each of such three classes, and shall compute such tax as if the real estate or tangible personal property on which such tax is based passed to the classes referred to in the same proportion, but only such percentage of the exemptions provided for in section six shall apply as the estate of such nonresident in this State is of the entire estate.

§ 8. Provides that where there is a life estate annuity or limited term with remainder over that the tax shall be assessed as of the class to which the life tenant belongs and paid on that basis. When the remainder falls in if the remainderman is in a class taxed at a higher rate he must pay the excess, if at a lower rate the State refunds the excess without interest. The remainderman is not charged interest when he pays the excess within two months. The probate judge having jurisdiction must certify to the State Treasurer within ten days when the termination of any life estate comes to his knowledge.

§ 9. Each administrator, executor or trustee shall, and the tax commissioner or any person interested may apply to such court to ascertain the amount of the tax upon any gift, devise, bequest or inheritance and such court shall prepare a proposed decree stating the amount of such estate as appraised, the gains, the deductions, the name and relationship to the decedent of each beneficiary, donee, grantee, heir or distributee the value of the taxable estate passing to each class of beneficiaries, the amount of each exemption and the reason therefor, and the amount of tax payable by each beneficiary, and the rate and amount of the tax on the estate passing to each class, and shall assign a time and place for hearing such application not less than two nor more than four weeks after such assignment and shall cause a copy of such proposed decree and the order of hearing thereon to be sent to the tax commissioner and a like copy thereof to the administrator, executor or trustee of such estate at least two weeks before the time of such hearing. Such court may cause notice of the time and place of such hearing to be given to other persons interested in such manner as it shall direct. The tax commissioner of any person interested may appear before such court at such hearing and be heard concerning such decree. Such court shall determine the amount of such tax and shall enter a decree for such amount in the form of such proposed decree. If there shall be no appearance on behalf of the tax commissioner, and it shall appear to the court that such proposed decree ought to be modified, such hearing shall be adjourned for not less than ten days and notice of the time and place of such adjourned hearing and of the changes to be made in such proposed decree shall be given to the tax commissioner, who may appear and be heard thereon. At such adjourned hearing the court may enter a final decree determining the amount of such tax, which shall be conclusive upon the State and persons interested unless appeal shall be taken as provided for appeals from other decrees and orders of such court. Such court shall issue a certificate to the State Treasurer of the amount of such tax. In all cases where such court modifies the proposed decree the judge of such court shall cause a copy of the final decree to be forwarded to the tax commissioner. [As amended by chap. 356, L. 1917.]

§ 10. Such tax shall be paid to the State Treasurer within fourteen months

after the death of the donor, grantor, testator or intestate, by the administrator, executor or trustee, provided the court of probate may, after hearing, on the application of the administrator, executor or trustee, made and filed with such court at or before the expiration of said fourteen months, extend the time for the payment of such tax or any part thereof; such application shall set forth the extension desired and the reason therefor, and a copy of the same shall be mailed to the tax commissioner at least six days before the date of such hearing; such court, after such hearing, shall forthwith send to the tax commissioner a copy of any order extending the time for the payment of such tax or any part thereof. Except as otherwise provided by this act or by the provisions of a will, such tax shall be paid from the property passing to the donee, beneficiary or distributee, unless such recipient shall pay to the executor, administrator or trustee the amount thereof. Only one exemption as herein provided shall be allowed to each class, and each beneficiary or distributee of the same class shall pay such percentage of the tax on property passing to such class as his share is of such property. The tax to be paid by a life tenant or limited term or annuitant shall be such percentage of the whole tax on property passing to persons of the same class as the portion of the principal of the estate which such tenant for life, or limited term or annuitant has the use of is of the net taxable estate passing to such class. Any executor, administrator or trustee may sell, in such manner as the court of probate shall order, such portion of any property passing to any beneficiary or distributee as may be necessary to pay such tax and the expense of sale, unless such beneficiary or trustee shall pay the amount of such tax to the administrator, executor or trustee. [As amended by chap. 356, L. 1917.]

§ 11. Fixes the rate of interest on unpaid taxes at 9% from date when due. Receipt of State Treasurer must be produced before any final accounting allowed. Where the computation of the tax is extended or postponed the tax commissioner, with the approval of the Attorney-General, may compromise the amount of the tax with the estate, and payment of the sum agreed satisfies the tax.

§ 12. All gifts of real or personal estate by deed, grant, or other conveyance made in contemplation of death, or to take effect in possession or enjoyment upon the death of the grantor or donor, shall be testamentary gifts within the meaning of this act, for taxation purposes, and all property conveyed to so take effect shall be subject to the tax imposed by the provisions of this act. Executors and administrators shall forthwith inventory such property, and the computation of such tax shall be made as herein provided. No executor, administrator, trustee, or bailee, having possession of property so conveyed or given, or of any deed, grant, conveyance or other evidence of such transfer, gift, or alienation of property so conveyed or given, shall deliver the same until such property has been inventoried and appraised, and such inventory and appraisal accepted by the court. If no person interested shall apply for letters of administration within thirty days after the death of any intestate, the tax commissioner may apply to the court for the appointment of an administrator, and after notice and hearing such court may appoint an administrator.

§ 13. Whenever any person shall exercise a power of appointment created by a will hereafter admitted to probate, or shall by will exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed to be a disposition of property by the person exercising the power taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed and devised by the donee by will; and whenever any person possessing such power of appointment shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a disposition of property taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure in the same manner as though the persons and corporations thereby becoming entitled to the possession or enjoyment of property to which such power related had succeeded

thereto by a will of the donee of the power failing to exercise the same, taking effect at the time of such omission or failure.

§ 14. Provides for the filing of exemplified copies of a will found in another State conveying property situated in this State.

§ 15. Chapter 152 of the public acts of 1905 and chapter 73 of the public acts of 1913 are hereby repealed.

§ 16. This act shall take effect from its passage and shall apply to estates of all persons whose death occurs thereafter and to estates vesting by the exercise of any power of appointment or upon the death of any grantor or donor occurring subsequent to the passage of this act.

### AMENDMENT OF 1919.

#### CHAPTER 283, PUBLIC ACTS OF 1919.

#### AN ACT Concerning Taxes on Inheritances.

Section 1. The provisions of sections 1261, 1264 and 1265 of the general statutes shall apply to the following property belonging to deceased persons, nonresidents of this State which shall pass by will or inheritance under the laws of this or any other State or country, and such property shall be subject to the tax prescribed in said sections: All real estate and tangible personal property, including moneys on deposit, within this State; all intangible personal property, including bonds, securities, shares of stock and choses in action the evidences of ownership of which shall be actually within this State; shares of the capital stock or registered bonds of all corporations organized and existing under the laws of this State the certificates of which stock or which bonds shall be without this State, where the laws of the State or country in which such decedent resided shall, at the time of his decease, impose a succession, inheritance, transfer or similar tax upon the shares of the capital stock or registered bonds of all corporations organized or existing under the laws of such State or country, held under such conditions at their decease by residents of this State.

§ 2. Whenever ancillary administration has been taken out in this State on the estate of any nonresident decedent having property subject to said tax under the provisions of section 1 of this act, the court of probate having jurisdiction shall have the same powers in relation to such tax and shall give the same notice to the tax commissioner of all hearings relating thereto as is required in the case of the estates of resident decedents, and with the same right of appeal. The provisions of this act concerning notice to the tax commissioner shall not apply to cases where ancillary administration has been taken out in this State upon estates of nonresident decedents.

§ 3. Where ancillary administration has not been taken out in this State on the estate of a nonresident decedent, including any property within the provisions of section 1 of this act, no executor, administrator or trustee appointed under the laws of any other jurisdiction shall assign, transfer or take possession of any such property standing in the name or belonging to the estate of, or held in trust for, such decedent until the tax prescribed in section 1 of this act shall have been paid to the State Treasurer or retained as hereinafter provided.

§ 4. No corporation or person in this State having possession of or control over any such property, including any corporation any shares of the capital stock of which may be subject to said tax, shall deliver or transfer the same to such a foreign executor, administrator or trustee, or to the legal representatives of such decedent, or upon their order or request; unless notice of the time and place of such intended delivery or transfer be mailed to the tax commissioner at least ten days prior to said delivery or transfer; nor shall any such corporation make any such delivery or transfer without retaining a sufficient amount of said property to pay any such tax which may be due or may thereafter become due under the provisions of section 1264 of the general statutes, unless said tax commissioner consents thereto in writing. Failure to mail such notice, or to allow the tax commissioner to examine said property, or to retain a sufficient amount to pay such tax shall, in the absence of the



written consent of the tax commissioner, render such corporation or person liable to the payment of a penalty of three times the amount of such tax, which payment shall be enforced in an action brought in the name of the State.

§ 5. Said tax commissioner, personally or by his representative, may examine such property at the time of such delivery or transfer, and it shall be his duty, as speedily as possible after receiving notice of said property or of the intended delivery or transfer thereof, to fix the valuation of such property for the purpose of assessing such tax; and he shall assess the tax, and the amount thereof, payable on such property. Wherever a tax is assessed on such property by such tax commissioner he shall forthwith lodge with the State Treasurer a statement showing such valuation with the amount of such tax, and shall give notice thereof to the person or corporation having possession of or control over such property. Any administrator or executor appointed under the laws of any other jurisdiction who is aggrieved by the valuation or assessment affixed as aforesaid by the tax commissioner, may, within twenty days after the date of the filing of the aforesaid statement with the Treasurer, apply to the court of probate in any district in which any of the property so assessed is situated, which court shall have power to cause a revaluation of all property so assessed and a reassessment of the tax thereon, to be made in the manner provided by law for the appraisal of and the assessment of the succession tax on estates of resident decedents, and subject to the same right of appeal.

**Prior Statutes:** L. 1889, ch. 180; L. 1893, ch. 257; L. 1897, ch. 201; L. 1901, ch. 123; L. 1903, ch. 63; L. 1905, ch. 256; L. 1907, ch. 179; L. 1909, ch. 218; L. 1911, ch. 204; L. 1913, ch. 231.

## DELAWARE.

New statute, approved March 24, 1917, taxes all property of nonresidents within the State except stock in Delaware corporations.

From March 26, 1909, to March 24, 1917, taxed all property of nonresidents within the State on transfers to collaterals and strangers only.

TABLE OF RATES AND EXEMPTIONS SUBSEQUENT TO MARCH 24, 1917

CLASS OR RELATIONSHIP	Exemption	RATES OF TAX			
		Above exemption to \$30,000	\$30,000 to \$100,000	\$100,000 to \$200,000	In excess of \$200,000
Parent, grandparent, husband, wife, child by birth or legal adoption, daughter-in-law, son-in-law, lineal descendant.	\$3,000	1%	2%	3%	4%
Brother or sister, either of the whole or half blood of decedent, or of decedent's parent or grandparent, or any lineal descendant of the same.	\$1,000	Above exemption to \$25,000 2%	\$25,000 to \$100,000 3%	4%	5%
All others, except charitable, educational, historical or religious societies, or institutions, cities or towns for public improvement, school districts or library commissions.	.....	On all up to \$25,000 5%	\$25,000 to \$100,000 6%	7%	8%

The present act approved March 24, 1917.

The amendment of 1917, after changing the title of the prior statutes from "Collateral Inheritance Tax" to "Inheritance Tax," provides:

146. § 109. Property subject to; rates; exemptions. All property within the jurisdiction of this State, real and personal, and every estate and interest therein, whether belonging to residents or nonresidents of this State, (except shares of the capital stock of corporations created under the laws of this State when owned by persons without this State) which passes by will, or by the intestate laws of this State, or by deed, grant, gift, or settlement (except in cases of a bona fide purchase for full consideration in money or money's worth) made in contemplation of, or intended to take effect in possession or enjoyment after, the death of the grantor, donor, or settlor, to any person, or persons, bodies politic, or corporate, in trust or otherwise, shall be subject to taxation as follows:

The act then fixes the rates and exemptions as shown in the foregoing table.

The statute then provides as follows:

"Any transfer of a material part of the property of a decedent in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without full consideration in money or money's worth, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this chapter.

§ 2. That said chapter 6 be and the same is hereby further amended by repealing "152, Sec. 115" thereof, and inserting in lieu thereof the following new "152, Sec. 115":

152. § 115. Register of wills; returns by of tax collected, to State Treasurer; accounting by; commissions of; liability upon bond of; removal from office, when: It shall be the duty of the several registers of wills in the State, to make return, under oath to the State Treasurer, on the first days of January, April, July and October, in each year, or within thirty days thereafter, of all sums of money received by them as taxes under the provisions of said sections 109 to 115 inclusive, of this chapter, and to pay over to said State Treasurer the amounts so by them received respectively, at the time of making such returns, and if any register of wills shall fail to pay over, as required by this section, the State Treasurer shall give notice to the Attorney-General of the State, whose duty it shall be to institute suit on the official bond of such register of wills, for the use of the State, to recover the amount due from such register of wills, and in such suit the amount appearing to be due, with interest thereon, and costs, shall be recovered, which recovery shall be evidence of misbehavior in office, and upon conviction thereof such register of wills shall be removed from office.

### THE PRIOR STATUTE.

**TABLE OF RATES AND EXEMPTIONS FROM MARCH 26, 1909, TO MARCH 24, 1917**

CLASS OR RELATIONSHIP	Exemption	Rate of tax
Father, mother, grandfather, grandmother, wife, husband, child by birth or legal adoption or lineal descendants.	All	No tax.
Brother, sister or their descendants . . . . .	500	1% on all in excess of exemption.
Brother or sister, either of the whole or half blood of the decedent's parents or their descendants.	500	2% on all in excess of exemption.
Brother or sister either of the whole or half blood of the decedent's grandparents or their descendants.	500	3% on all in excess of exemption.
All others except charitable corporations specified in section 1.	500	5% on all in excess of exemption.

**LAWS OF 1909, CHAPTER 225, AS AMENDED BY L. 1913, BECAME A  
LAW MARCH 26, 1909.**

Section 1. All property within the jurisdiction of this State, real and personal, and every estate and interest therein, whether belonging to inhabitants of this State or not, which shall, after the approval of this act, pass by will, or by the intestate laws of this State, or by deed, grant or gift (except in cases of a *bona fide* purchase for full consideration in money or money's worth, made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person or persons, bodies politic or corporate, in trust or otherwise,

**Note:** The section then fixes the rates and exemptions as shown in the above table.

The section concludes: provided further that nothing in this act shall be construed to impose any tax upon any property, estate or interest therein passing to or for the use, or in trust for, charitable, educational or religious societies or institutions, or cities or towns for public improvement, or to school districts or library commissions.

§ 2. Requires the executor or administrator to pay the tax before he pays any pecuniary legacy or distributive share within thirteen months and in case of failure shall not be allowed any commissions and makes him liable on his official bond.

§ 3. The estate or interest of every person, body politic or corporate, in all real and personal property, taxable under the provisions of section 1 of this act, whether in remainder, reversion or otherwise, or in trust or otherwise, or conditioned upon the happening of a contingency or dependent upon the exercise of a discretion, or subject to a power of appointment, or otherwise, and all annuities taxable as aforesaid, shall be valued by the register of wills for the purpose of determining the amount of tax to be collected from such person, body politic, or corporate, under the provisions of this act. Where the property shall pass in trust or otherwise to one or more persons, bodies politic or corporate, for a term of years or greater estate or interest, and with remainder or reversion to one or more other persons, bodies politic, or corporate, the estate or interest of each beneficiary shall be valued separately. The register of wills referred to in this section shall be the register of wills of the county where letters testamentary or of administration have been granted on the estate of the donor, grantor, devisor or intestate from whom the property aforesaid shall have passed as set forth in section 1 of this act, but if no such letters have been granted then the said register shall be the register of wills of the county in which such property is, or is situated. Such valuation shall be made within thirteen months of the death of the donor, grantor, devisor or intestate aforesaid. The register shall give one week's notice to the parties in interest by posting the same in his office or in some other manner as he shall deem proper, of the time when he will hear any of said parties relative to such valuation. The said register shall have power to summon witnesses and take testimony relative to the valuation aforesaid.

The section further provides for an appeal from the appraisal to the orphan's court, the decision of which is final. It makes the tax a lien on real estate and provides for the collection of the tax by an executor or administrator from a specific legatee or heir to distributive share of specific property. In failure of the beneficiary to pay within thirty days application to the orphan's court is required for an order of sale. Where the legacy is made a charge on land the holder of the land must pay the tax to the executor. Trustees must pay the tax out of the trust property to the executor or if none named to the register of wills of the proper county. The executor or administrator must file, within two months of appointment, with the register of wills, a sworn statement of all real estate of the decedent. The register of wills must keep a docket of such statements and note therein the assessment and payment of the tax. The State Treasurer must examine this docket and notify the Attorney-General of delinquents, who must proceed to collect the tax. If no executor or administrator appointed a party liable may pay tax to register of wills.

§ 4. Makes the bond of an executor or administrator liable for taxes.

§ 5. Every executor or administrator collecting the tax aforesaid by sale of any estate or interest as aforesaid, shall pay the tax so collected to the register of wills of the proper county.

§ 6. Every register of wills receiving any tax under the provisions of this act, shall give the person paying the same, duplicate receipts therefor, one of which shall be forwarded by the person so paying as aforesaid, to the State Treasurer to be by him preserved, and either of said duplicate receipts shall be evidence in suits upon the bond of said register to recover the taxes so by him received.

§ 7. Requires the register of wills to make quarterly tax returns to the State Treasurer and makes their bondsmen liable in default.

**Prior Statutes:** L. 1869, ch. 390; L. 1871, ch. 21; L. 1871, ch. 24; L. 1877, ch. 337; L. 1883, ch. 8; L. 1883, ch. 11. The last act was in force until March 26, 1909.

## DISTRICT OF COLUMBIA.

Has no inheritance tax.

## FLORIDA.

Has no inheritance tax.

## GEORGIA.

Taxes property of nonresidents within the State.

TABLE OF RATES

CLASS OR RELATIONSHIP	Amount of exemption	Rate of tax
Father, mother, husband, wife, child, brother, sister, wife or widow of a son, adopted child or lineal descendant if decedent.	\$5,000	1% on all in excess of exemption
All others . . . . .	None	5%

### LAWS 1913, NO. 259, BECAME A LAW AUGUST 19, 1913. SLIGHT AMENDMENT BY CHAPTER 334, L. 1916, SEC. 10.

Section 1. Be it enacted by the general assembly of the State of Georgia, and it is hereby enacted by authority of the same, that from and after the passage of this act, all property within the jurisdiction of this State, real and personal, and every estate and interest therein, whether belonging to the inhabitants of this State or not, which shall pass on the death of a decedent by will or by the laws regulating descents and distributions, or by deed, grant, or gift, except in cases of a *bona fide* purchase for a full consideration made, or intended to take effect in possession or enjoyment, after the death of the grantor or donor, to any person or persons, bodies politic or corporate in trust or otherwise shall be subject to taxes and shall pay the following tax to this State:

§ 2. Be it further enacted, that if any section of this act or any part of any section of this act be hereafter declared invalid, the remainder of said act shall stand.

§ 3. Be it further enacted by the authority aforesaid, that the taxes imposed by this act shall be and remain a lien upon the property subject to said tax from the death of the decedent, and that all taxes imposed by this act unless

otherwise herein provided for, shall be due and payable at the death of the decedent.

**Note:** The rest of the section imposes the rates and exemptions of the foregoing table.

§ 4. Provides for the valuation and taxation of life estates and remainders upon mortality tables using the basis of 6%.

§ 5. Requires the executor or administrator to pay the tax out of the legacy or distributive share if in money, to withhold the property until the beneficiary pays it and to sell it in default after due notice in the same manner as for debts, and makes them personally liable.

§ 6. Provides that where any legacy is a charge on real estate the devisee must deduct the tax before paying it.

§ 7. Requires the executor or administrator to file an inventory with the court of ordinary within three months of appointment under penalty of \$1,000 for neglect or refusal.

§ 8. Provides that if no will is offered or administration proceedings commenced within three months of death the Comptroller-General of the State or tax collector of the county may apply for letters.

§ 9. Provides that if the heirs file satisfactory inventory and administration is not necessary it may be dispensed with, but proceedings must be had upon the inventory as in all other cases.

§ 10. Be it further enacted by the authority aforesaid, that when property subject to this tax is transferred or limited in trust or otherwise, and the rights, interest or estates of the transferees or beneficiaries are dependent upon contingencies or conditions whereby each may be wholly or in part created, defeated, extended or abridged, the tax so imposed on such property shall be due and payable forthwith by the executor or trustee out of the property transferred; that where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

§ 11. Provides for the appointment of appraisers and their fees and appraisal on due notice to all parties in interest.

§ 12. Be it further enacted by the authority aforesaid, that immediately upon the filing of the report of the appraisement the ordinary shall calculate and determine the amount of tax due on such property under this act, and shall in writing certify such amount to the tax collector, to the executor, administrator or trustee and to the person to whom or for whose use, the property passes; and that for such calculation and for certifying said amount to the tax collector, the ordinary shall receive a fee of \$3.00, which shall be taxable as a part of the costs of administering said estate; that said tax shall be a lien upon such property from the death of the decedent until paid and shall bear interest from such death until paid, unless payment shall be made within twelve months after such death, in which case no interest shall be charged.

§ 13. Be it further enacted by the authority aforesaid, that all taxes received under this act by any executor, administrator or trustee, shall be paid by him within thirty days thereafter to the tax collector of the county whose court of ordinary has jurisdiction of the estate of the decedent; that upon such payment the tax collector shall make duplicate receipts thereof; that he shall deliver one to the party making payment, the other he shall send to the Comptroller-General of the State, who shall charge the tax collector with the amount thereof, and shall countersign such receipt and transmit same to the party making payment.

§ 14. Be it further enacted by the authority aforesaid, that the tax collector of each county shall, on or before the 15th day of each month, pay to the Comptroller-General all taxes received by him under this act before the first day of that month, deducting therefrom his fees, which shall be the same as his fees on other tax monies received by him.

§ 15. Be it further enacted by the authority aforesaid, that no final account of an executor, administrator or trustee shall be allowed by the court of ordinary unless such account shows and the ordinary so finds, that all taxes

imposed under this act on any property or interest passing through his hands as such have been paid; that the receipt of the tax collector for such taxes shall be proper voucher for such payment.

§ 16. Be it further enacted by the authority aforesaid, that when the taxes imposed by this act have not been paid within twelve months from the date of the filing of the amount of said tax by the ordinary in the office of the tax collector to whom said tax is payable, the said tax collector shall issue executions against the persons, and property liable for said tax and proceed in every way for the enforcement and payment of said tax in like manner that he may now proceed by execution, and for the enforcement and payment of direct taxes on property against delinquent tax payers.

§ 17. Be it further enacted by the authority aforesaid, that all laws and parts of laws in conflict herewith be, and the same are, hereby repealed.

Amendment of 1916, Chapter 334, L. 1916, § 10 — Makes it the duty of the Attorney-General to enforce the Inheritance Tax Law and requires the ordinaries of the several counties to make reports and cooperate with him.

**Prior Statutes:** No inheritance tax prior to act of 1913.

## HAWAII.

Taxes all property of nonresidents within the territory.

By act 223, effective July 1, 1917, the rates and exemptions as to estates of persons dying after that date are: Father, mother, husband, wife, child, adopted child, grandchild, \$5,000 exempt;  $1\frac{1}{2}\%$  \$5,000 up to \$20,000;  $2\%$  \$20,000 up to \$50,000;  $2\frac{1}{2}\%$  \$50,000 to \$100,000;  $3\%$  \$100,000 to \$250,000; over \$250,000  $3\frac{1}{2}\%$ . As to all others except aliens and nonresidents of the United States, the exemption is \$500, and the tax is  $3\%$  from \$500 to \$5,000;  $5\%$  \$5,000 to \$20,000;  $5\frac{1}{2}\%$  \$20,000 to \$50,000;  $6\%$  \$50,000 to \$100,000, and  $6\frac{1}{2}\%$  over \$100,000. Aliens and nonresidents have an exemption of \$500 and pay  $10\%$  on all in excess of that sum.

Prior to July 1, 1917, the rate was  $2\%$  on all above the exemption of \$5,000 as to the first class, and  $5\%$  on all above \$500, as to the second, and there was no discrimination against aliens.

## LAWS 1909, CHAPTER 102, AS AMENDED BY CHAPTERS 66 AND 147, LAWS 1909, AND CHAPTER 130, LAWS 1911.

Section 1. All property which shall pass by will or by the intestate laws of this territory, from any person who may die seized or possessed of the same while a resident of this territory, or which being within this territory shall pass whether by the laws of this territory or otherwise, from any person who may die while not a resident of this territory, or which, or an interest in or income from which shall be transferred by deed, grant, sale, or gift made in contemplation of the death of the grantor, vendor, or bargainer or intended to take effect in possession or enjoyment after such death to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy to any property, or to the income thereof, shall be and is subject to a tax hereinafter provided for, to be paid to the treasurer of the territory of Hawaii as hereinafter directed, for the use of the territory; and such tax shall be and remain a lien upon the property passed or transferred until paid and all administrators, executors and trustees of every estate so transferred and the person to which the property passes or is transferred or passed shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exceptions hereinafter granted.

Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the

passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omissions or failure in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of the omission or failure.

The rest of the section and section 2 prescribe the rates and exemptions of the foregoing table.

§ 3. Provides that remaindermen who elect not to pay the tax until they come into possession may file a bond and inventory within one year in twice the amount of the tax and renew the bond every five years.

§ 4. Taxes the excess over reasonable services of bequests to executors in lieu of commissions.

§ 5. Makes taxes due at death, no interest due until after 18 months, when 10% charged from time of accrual, allows a discount of 5% if paid within one year. After 18 months executor or administrator must give a bond if the tax is not paid.

§ 6. Provides that the penalty may be reduced to 7% from expiration of 18 months in case of unavoidable delay.

§ 7. Requires the executor or administrator to deduct the tax or collect it from the beneficiary to whom he may not deliver the property until the tax is paid.

§ 8. Gives power of sale to pay the tax as in case of debts.

§ 9. Provides for receipts which must be produced before any final accounting can be had.

§ 10. Provides for proportionate refund when debts are proved against the estate after distribution.

§ 11. Requires the payment of the tax by a foreign executor or administrator before transferring property and makes the usual regulations as to securities deposited with banks and trust companies which must notify the treasurer and permit an examination.

§ 12. Provides for appraisal of life estates and remainders to be valued on American Experience Tables on the 5% basis.

The remaining sections make the usual provisions as to procedure and the collection of delinquent taxes.

## IDAHO.

Taxes all property of nonresidents within the State, including stock in domestic corporations.

TABLE OF RATES AND EXEMPTIONS

CLASSIFICATION OR INDICATION OF RELATIONSHIP	Property exemption	Application of rates to value of inheritance or bequests				
		On excess after deduction of exemption from \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child.	Widow or minor child, \$10,000; Others, \$4,000.	1%	1½%	2%	2½%	3%
Brother, sister, or descendant of either, wife or widow of a son, husband of a daughter.	\$2,000	1½%	2½%	3%	3½%	4½%
Uncle, aunt, or descendant of either.	\$1,500	3%	4½%	6%	7½%	9%
Grand uncle, grand aunt, or descendant of either.	\$1,000	4%	6%	8%	10%	12%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate, except charitable corporations, exempted by section 1877.	\$500	5%	7½%	10%	12½%	15%

## LAWS OF 1907, CHAPTER 78, BECAME A LAW MARCH 16, 1907.

(Codified Idaho Revised Codes [1908], Title 10, Chap. 5.)

§ 1873. All property which shall pass, by will or by the intestate laws of this State, from any person who may die seized or possessed of the same while a resident of this State, or if such decedent was not a resident of this State at the time of death, which property or any part thereof, shall be within this State, or any interest therein, or income therefrom, which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, vendor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, shall be and is subject to a tax hereinafter provided for, to be paid to the treasurer of the proper county, as hereinafter directed for the benefit of the general fund of this State to be used for all the purposes for which said fund is available. And the county treasurer shall, upon receipt of said tax, pay the same to the State Treasurer and take duplicate receipts thereof, one of which the county treasurer shall retain, and transmit the other to the State Auditor and receive from him credit for the amount thereof on his account; and such tax shall be and remain a lien upon the property passed or transferred until paid, and the person to whom the property passes or is transferred, and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed, and only upon the excess over the exemptions hereinafter granted.



§ 1874. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this chapter, such appointment, when made, shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this chapter shall be deemed to take place to the extent of such omission or failure, in the same manner as though the person or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

Sections 1875 and 1876 fix the rate of tax as given in the foregoing table.

§ 1877. The following exemptions from the tax are hereby allowed:

1. All property transferred to societies, corporations and institutions now or hereafter exempted by law from taxation or to any public corporations, or to any society, corporation, institution or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution or association of persons in trust for or to be devoted to any charitable, benevolent, educational or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof shall be exempt.

The rest of the section gives the exemptions as shown in the table.

Note: The rest of the statute is substantially a copy of that of California prior to 1917 and will therefore be briefly summarized.

§ 1878. Provides for the immediate appraisal of life estates and remainders. If the remainderman elect not to pay the tax until the remainder falls in he may file a bond in twice the amount of the tax.

§ 1879. A bequest to executor in lieu of commissions is taxed on the excess over reasonable compensation.

§ 1880. Taxes due at death. If paid within six months 5% discount allowed. No interest charged until after one year. After that 10%, but if unavoidable delay court may extend time of payment and reduce interest to 6%.

§ 1881. Provides for the collection of the tax by the executor or administrator from the beneficiary.

§ 1882. Gives power to sell chattels or real estate to pay tax.

§ 1883. Provides for payment of tax by executor or administrator to county treasurer and must produce receipt before entitled to final accounting.

§ 1884. Provides for refund of proportion of tax where debts are proved against estate after distribution.

§ 1885. Requires payment of tax by foreign executors and administrators before transferring property within the State and requires trust and safe deposit companies, banks, etc., to hold assets open to inspection and to retain enough to pay the tax before delivery to executor or administrator under a penalty of twice the tax.

§ 1886. Provides for the appointment of an appraiser, the appraisal, and the valuation of life estates and remainders actaries combined tables on a basis of 5%.

§ 1887. Forbids the appraiser to accept a bribe under penalty of fine and imprisonment.

§ 1888. Gives jurisdiction to the probate court in which the property is situated in case of nonresidents.

§ 1889. The words "estate" and "property" as used in this chapter shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees or

successors, and shall include all personal property within or without the State. The word "transfer" as used in this chapter shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein described. The word "decendent" as used in this chapter shall include the testator, intestate, grantor, bargainer, vendor or donor.

**Note:** The rest of the statute concerns the collection of delinquent taxes.

**Prior Statutes:** None.

### ILLINOIS.

Taxes transfers of stock in domestic corporations owned by nonresident decedents.

TABLE OF RATES AND EXEMPTIONS PREVAILING FROM 1909 TO 1919.

CLASS OR RELATIONSHIP	Exemption	Rates of tax				
Father, mother, husband, wife, child, brother, sister, wife or widow of son, daughter's husband, adopted or mutually acknowledged child, or lawful lineal descendant of decedent.	\$20,000	Excess of exemption up to \$100,000, 1%		All in excess of \$100,000, 2%.		
Aunt, uncle, niece, nephew or lineal descendants of same	\$2,000	Excess of exemption up to \$20,000, 2%.		All in excess of \$20,000 above exemption, 4%.		
		Up to \$10,000	\$10,000 to \$20,000	\$20,000 to \$50,000	\$50,000 to \$100,000	All in excess of \$100,000
All others, excepting charitable bequests exempted by section 28.	Less than \$500 not taxed.	3%	4%	5%	6%	10%

TABLE OF RATES AND EXEMPTIONS AS TO DECEDENTS DYING AFTER JULY 1, 1919.

Class or Relationship	Exemption	Above exemption to \$50,000	Next \$100,000 or part thereof	Next \$100,000 or part thereof	Next \$100,000 or part thereof	On the balance
Father, mother, lineal ancestor, husband, wife, child, daughter-in-law, son-in-law, adopted or mutually acknowledged child or its descendants, or any lawful lineal descendant of decedent .....	\$20,000	1%	2%	3%	5%	7%
Brother or sister.....	\$10,000					
		Above exemption to \$20,000	Next \$50,000 or part thereof	Next \$100,000 or part thereof	On the balance	
Uncle, aunt, niece, nephew,, or their lineal descendants. ....	\$500	3%	4%	6%	8%	
		Above exemption to \$20,000	Next \$30,000 or fraction	Next \$50,000 or fraction	Next \$50,000 or fraction	Next \$100,000 or fraction
All others, excepting charitable bequests exempted by section 28.....	\$100	5%	6%	8%	10%	12%
						On the balance
						15%

## THE STATUTE.

**L. 1909, IN FORCE JULY 1, 1909, AS AMENDED BY L. 1913, L. 1917 AND L. 1919.**

The act of 1919 materially altered the rate and exemptions.

The act as amended to date is as follows:

Section 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not herein-after exempted, in the following cases:

1. When the transfer is by will or by the intestate laws of this State, from any person dying, seized or possessed of the property while a resident of the State.

2. When the transfer is by will or intestate laws of property within the State, and the decedent was a nonresident of the State at the time of his death.

3. When the transfer is of property made by a resident, or by a nonresident when such nonresident's property is within this State, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or income therefrom, by any such transfer, whether made before or after the passage of this act.

4. Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

5. Whenever property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer taxable under the provisions of this act in the same manner as though the whole property to which such transfer relates was owned by said parties as tenants in common and had been bequeathed to the surviving joint tenant or joint tenants, person or persons, by such deceased joint tenant or joint depositor by will.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, lineal ancestor of decedent, husband, wife, child, brother or sister, wife or widow of the son or the husband of the daughter, or any child or children legally adopted, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent: *Provided, however*, such relationship began at or before said person's fifteenth birthday and was continuous for said ten years thereafter: *And, provided, also*, that one of the parents of such person so standing in such relation shall be deceased when such relationship commenced, or to any lineal descendant of such descendant (decedent) born in lawful wedlock. In every such case the rate of tax shall be:

One per cent on any amount up to and including the sum of fifty thousand dollars in excess of the exemption;

Two per cent on the next one hundred thousand dollars or any part thereof;

Three per cent on the next one hundred thousand dollars or any part thereof;

Five per cent on the next two hundred and fifty thousand dollars or any part thereof;

Seven per cent on the amount representing the balance of each individual transfer: *Provided*, that any gift, legacy, inheritance, transfer, appointment or interest passing to a father, mother, lineal ancestor of decedent, husband, wife, child, wife or widow of the son or the husband of the daughter, or any child or children legally adopted or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent as above provided which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes and the tax is to be levied in such cases only upon the excess of twenty thousand dollars received by each person: *And, provided, further*, that any gift, legacy, inheritance, transfer, appointment or interest passing to a brother, sister, which may be valued at a less sum than ten thousand dollars shall not be subject to any such duty or taxes and the tax is to be levied in such cases only upon the excess of ten thousand dollars received by each person.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of such uncle, aunt, niece or nephew. In every case the rate of tax shall be:

Three per cent on any amount up to and including the sum of twenty thousand dollars, in excess of the exemption.

Four per cent on the next fifty thousand dollars or any part thereof.

Six per cent on the next one hundred thousand dollars or any part thereof.

Eight per cent on the amount representing the balance of each individual transfer: *Provided*, that any gift, legacy, inheritance, transfer, appointment or interest passing to an uncle, aunt, niece, nephew or any lineal descendant of such uncle, aunt, niece or nephew which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or taxes and the tax is to be levied in such case only upon the excess of five hundred dollars received by such uncle, aunt, niece, nephew or any lineal descendant of such uncle, aunt, niece, or nephew.

In all other cases the rate of tax shall be as follows:

Five per cent on any amount up to and including the sum of twenty thousand dollars in excess of the exemption:

Six per cent on the next thirty thousand dollars or any part thereof:

Eight per cent on the next fifty thousand dollars or any part thereof:

Ten per cent on the next fifty thousand dollars or any part thereof:

Twelve per cent on the next one hundred thousand dollars or any part thereof:

Fifteen per cent on the amount representing the balance of each individual transfer; *Provided*, that any gift, legacy, inheritance, transfer, appointment or interest passing to such persons which may be valued at a less sum than one hundred dollars shall not be subject to any such duty or taxes and the tax is to be levied in such cases only upon the excess of one hundred dollars received by each person.

The tax imposed hereby shall be upon the clear market value of such property, at the rates hereinabove prescribed. [Amended by Act approved June 28; in force July 1, 1919.]

## 2. Life Estate, Appraisalment, Lien, Bond, Renewal.

§ 2. When any property or interest therein or income therefrom shall pass or be limited for the life of another, or for a term of years, or to terminate on the expiration of a certain period the property of the decedent so passing shall be appraised immediately after the death of the decedent, and the value of the said life estate, term of years or period of limitation shall be fixed upon mortality tables, using the interest rate or income rate of five per cent; and the value of the remainder in said property so limited shall be ascertained by deducting the value of the life estate, term of years or period of limitation from the fair market value of the property so limited, and the tax on the

several estate or estates, remainder or remainders, or interests shall be immediately due and payable to the treasurer of the proper county, together with interest thereon, and said tax shall accrue as provided in section three (3) of this act, and remain a lien upon the entire property limit until paid: *Provided*, that the person or persons, body politic or corporate, beneficially interested in property chargeable with said tax, elect not to pay the same until they shall come into actual possession or enjoyment of such property, then in that case said person or persons, or body politic or corporate, shall give bond to the People of the State of Illinois in a penal sum three times the amount of the tax arising from such property, limited with such sureties as the county judge may approve, conditioned for the payment of the said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of said property; which bond shall be filed in the office of the county clerk of the proper county: *Provided, further*, that such person or persons, body politic or corporate, shall make a full verified return of said property to said county judge and file the same in his office within one year from the death of the decedent, with the bond and sureties as above provided; and, further, said person or persons, body politic or corporate shall renew said bond every five years after the date of the death of decedent.

### 3. *Inheritance Tax, Due and Payable, Interest, Discount, Bond.*

§ 3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable, at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such time as said taxes are not paid: *Provided*, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax; and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 2 of this act, for the payment of said tax, together with interest.

### 4. *Legacies, Deductions and Retention of Tax, Apportionment, Application.*

§ 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before paying the same shall deduct said tax therefrom, and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced, if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts, to make an apportionment if the case requires it of the sum to be paid into his hands by such legatees, and for such further order relative thereof as the case may require.

### 5. *Executors, Administrators and Trustees, Powers and Liability.*

§ 5. All executors, administrators and trustees shall be personally liable for the payment of taxes and interest, and where proceedings for collection of taxes assessed be had, said executors, administrators and trustees shall be personally liable for the expenses, costs and fees of collection. They shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of duties of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

6. *County Treasurer, Payment to, Receipt, Accounts.*

§ 6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the State Treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall purchase a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him.

7. *Information, Furnishing.*

§ 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

8. *Refunds and Repayment.*

§ 8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the State or county treasury, or by the county treasurer if it has been so paid.

9. *Foreign Assignment of Securities, Safe Deposit or Trust Company, Notice, Retention of Tax, Examination of Securities, Penalty.*

§ 9. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident, or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the State Treasurer and Attorney General at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in,

the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the State Treasurer and Attorney General consent thereto in writing. And it shall be lawful for the State Treasurer, together with the Attorney General, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the State Treasurer in any court of competent jurisdiction.

10. *Refunds by State Treasurer, Application, Limitation.*

§ 10. When any amount of said tax shall have been paid erroneously to the State Treasurer, it shall be lawful for him on satisfactory proof rendered to him by said county treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error the amount of such tax so paid: *Provided*, that all applications for the repayment of said tax shall be made within two years from the date of said payment.

11. *County Judges' Powers and Duties; Appraisers, Appointment, Expenses and Compensation; Notice, Hearing, Evidence and Witnesses; Report, Order or Judgment, Appeal, Attorney General's Supervision and State's Attorney's Duties.*

§ 11. It shall be the duty of the county judge to ascertain whether any transfer of any property be subject to an inheritance tax under the provisions of this act, and, if it be subject to such inheritance tax, to assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estates and the tax to which the same is liable. The county judge, upon the application of any interested party, including the Attorney General, or upon his own motion as often as, or whenever occasion may require, may hear evidence and determine the fair cash value of such estate and the amount of inheritance tax to which the same is liable or the county judge may, in such case, in his discretion, where the facts are complicated and evidence is voluminous, appoint some competent person as appraiser to appraise the fair cash value at the time of the transfer thereof of the property of persons whose estates shall be subject to the payment of any inheritance tax imposed by this act. Whether the fair cash value of such estate shall be ascertained and determined by the appraiser appointed by the county judge or by the County judge, (Court) notice shall, in each case, be given by mail to all persons known to have a claim an (or) interest in such property, including the Attorney General, and to such persons as the county judge by order directs, of the time and place he will appraise such property: *Provided*, that in counties of the third class, because of the volume of general business transacted in the County Courts of such counties, the county judge in such counties of the third class may, in his direction, appoint appraisers in any and all cases. In case an appeal is taken to the County Court, it shall be the duty of the county clerk, within two days after such appeal shall have been perfected, to notify in writing the Attorney General and county treasurer. Within five days after the judgment of the County Court shall be entered on appeal, it shall be the duty of the county clerk to make and transmit a certified copy of such judgment to the Attorney General and county treasurer. Persons of full age and *sui juris* may, in writing, waive such notice, and consent to an immediate hearing by the county judge or the appraiser, as the case may be.

Both the appraiser and the county judge are hereby authorized and empowered to use subpoenas for and to compel the attendance of witnesses before them, respectively, and to take the evidence of such witnesses under oath. Any person who shall be served with a subpoena to appear and testify or to produce books and papers, issued either by the county judge or by the appraiser, and who shall refuse or neglect to appear or testify or to produce books and papers relevant to such assessment, as commanded in such subpoena, shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each offense. Any Circuit Court or judge thereof, either in term time or vacation, upon application of the county judge or appraiser, as the case may be, may, in its or his discretion, compel the attendance of witnesses, the production of books and papers, and giving of testimony before such county judge or appraiser, as the case may be, by attachment for contempt or otherwise in the same manner as the production of evidence may be compelled before said court. When the evidence is taken by an appraiser, he shall make a report thereof and of such value in writing to said county judge, with the depositions of the witnesses examined and such other facts in relation thereto, and to said matters as said county judge may by order require. The order of the county judge assessing and fixing an inheritance tax, together with the report, if any, of appraiser appointed by such county judge, shall be filed in the office of the county clerk. It shall be the duty of the county clerk, within five days after the filing of such order assessing and fixing the inheritance tax, to make and transmit a certified copy of such order to the Attorney General and to the county treasurer of the county in which such assessment is had, and, also, to give notice by mail to all parties known to be interested in such estate, substantially in such form as may be prescribed and furnished to the county clerk by the Attorney General.

Any person or persons, including the Attorney General, dissatisfied with the appraisement or assessment, may appeal therefrom to the County Court of the proper county within sixty days after the making and filing of such assessment order on paying or giving to the county judge security satisfactory to pay all costs, together with whatever taxes shall be fixed by the court: *Provided*, no bond or security shall be required of the Attorney General.

The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands on account of the inheritance tax collected in said appraisement, as by law provided, on the certificate of the county judge, such compensation as such judge may deem just for said appraiser's service as such appraiser, not to exceed ten dollars (\$10) per day for each [day] actually and necessarily employed in such appraisement and not to exceed fifteen per cent of the aggregate amount of tax levied and assessed by the county judge: *Provided*, such appraiser shall in no case receive less than ten dollars (\$10).

Such appraiser shall, also, be entitled to receive his actual and necessary traveling expenses and disbursements, including witness fees paid by him, if any, such expenses and disbursements to be paid by the county treasurer on the order of the county judge, out of the inheritance tax collected in such appraisement.

It shall be the duty of the Attorney General to exercise general supervision over the assessment and collection of the inheritance tax provided in this act, and in the discharge of such duty, the Attorney General may institute and prosecute such suits and proceedings as may be necessary and proper, appearing therein for such purpose; and it shall be the duty of the several State's Attorneys to render assistance therein when requested by the Attorney General so to do. [Amended by Act approved June 28, in force July 1, 1913. Laws 1913, p. 513.]

## 12. County Clerks' Fees, Assistants Attorney General, Salaries.

§ 12. The fees of the clerk of the County Court in inheritance tax matters in the respective counties of this State, as classified in the act concerning fees and salaries, shall be as follows:

In counties of the first and second class, for services in all proceedings in



each estate before the county judge the clerk shall receive a fee of five dollars. In all such proceedings in counties of the third class, the clerk shall receive a fee of ten dollars. Such fees shall be paid by the county treasurer, on the certificate of the county judge, out of any money in his hands, on account of said tax. In counties of the third class, the Attorney General shall designate an assistant or assistants Attorney General, whose special duty it shall be to attend to all matters pertaining to the enforcement of this act in respect to the appraisement, assessment and collection of the inheritance tax in such counties. The salaries of such assistants shall be as follows: One Assistant Attorney General, whose salary for the month of January, 1916, shall be twenty-nine hundred sixteen dollars and sixty-six cents, and thereafter five thousand dollars per annum payable in monthly installments; the salary of each of two Assistants Attorney General, for the month of January, 1916, shall be twenty-three hundred thirty-three dollars and thirty-three cents, and thereafter four thousand dollars per annum payable in monthly installments; the salary of one Assistant Attorney General for the month of January, 1916, shall be twenty hundred forty-one dollars and sixty-two cents, and thereafter thirty-five hundred dollars per annum payable in monthly installments. In counties of the third class, the clerk of the County Court may appoint a clerk in the office of the clerk of said court, to be known as the "inheritance tax clerk," whose compensation shall be fixed by the county judge, not to exceed fifteen hundred dollars per year, and not to exceed the fee earned in said office in inheritance tax matters, the surplus of such fees over said compensation so fixed to be turned into the county treasury. In addition to the above, the clerk of the County Court shall be entitled, in all suits brought for the collection of delinquent inheritance tax, and all contested inheritance tax cases appealed from the county judge to the County Court, and in all appeals from the County Court to the Supreme Court, the same fees as are now, or which may hereafter be, allowed by law in suits at law, or in the matter of appeals at law, to or from the County Court, which fees shall be taxed as costs and paid as in other cases at law; and in all cases arising under this act, including certified copies of documents or records in his office, for which no specific fees are provided, the clerk of the County Court shall charge against and collect from the persons applying for, or entitled to such services, or certified copies, the same fees as are now, or which may hereafter be, allowed for similar services or certified copies in said court, and for recording inheritance tax receipts required to be recorded in his office, he shall receive the same fees which are now or hereafter may be allowed by law to the recorder of deeds for recording similar instruments. [Amended by Act approved and in force December 3, 1915. Spl. Sess. Laws 1915, p. 35.]

### 13. *Bribe, Penalty.*

§ 13. Any appraiser appointed by this act, who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other persons liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and imprisoned not exceeding ninety days; and in addition thereto the county judge shall dismiss him from such service.

### 14. *County Court, Jurisdiction.*

§ 14. The County Court in the county in which the property is situated of the decedent, who was not a resident of the State or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the County Court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

### 15. *Unpaid Tax, Summons or Citation to Show Cause, Practice, Costs.*

§ 15. If it shall appear to the County Court that any tax accruing under this act has not been paid according to law, it shall issue a summons summoning

the persons interested in the property liable to the tax to appear before the court on a day certain, not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings, and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided, or which may hereafter be provided in probate cases in the County Court in this State, and the fees and costs in such cases shall be the same as in probate cases in the County Courts of this State.

*16. Unpaid Tax, Collection, Bill and Assumpsit.*

§ 16. Whenever it appears that any tax is due and unpaid under this act, and the persons, institutions or corporations liable for said tax have refused or neglected to pay the same, it shall be the duty of the Attorney General, if he has proper cause to believe a tax is due and unpaid, to prosecute the collection of the same by a bill in chancery, filed in the name of the People of the State of Illinois, to enforce the lien of inheritance tax, or, if there be grounds for the same, to secure an injunction against the transfer and delivery or other disposition of property subject to the lien for the payment of the inheritance tax, and the County Courts are invested with full jurisdiction to hear and determine such suits. The process, practice and proceedings shall be the same as in cases of chancery, except that the answer of the defendant need not be under oath.

In addition to the remedy hereinabove provided, any inheritance tax due and unpaid may be recovered in an action of assumpsit brought by the Attorney General, in the name of the People of the State of Illinois, against any person liable for such tax and the Attorney General is hereby authorized to bring such action in any court having jurisdiction. [Amended by Act approved June 28, in force July 1, 1913. Laws 1913, p. 513.]

*17. Information, Statement of Taxes Assessed.*

§ 17. The county judge and county clerk of each county shall, every three months, make a statement, in writing, to the county treasurer of the county of the property from which or the party from whom he has reason to believe a tax under this Act is due and unpaid.

It shall be the duty of the county treasurer on the first day of January, April, July and October of each year to make and transmit to the Attorney General a statement of the inheritance tax due and unpaid in all estates in which the county judge, or County Court, as the case may be, has levied and assessed such tax as the same appears from the certified copy of the orders of the county judge, or the certified copy of the judgment of the County Court assessing and fixing such tax on file in his office: *Provided*, in case an appeal shall be taken from the county judge to the County Court in any case, such statement shall not include the estate in which such appeal is pending and undisposed of. [Amended by act above.]

§ 18. [Repealed.]

*18. Inheritance Tax Records, Inspection.*

§ 19. The Treasurer of the State shall furnish to each county judge a book, in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereof filed with him, which books shall be kept in the office of the county judge as a public record.

*19. County Treasurer, Transmission of Taxes, Report, Penalty, Sureties' Liability, Action, State Treasurer's Duty.*

§ 20. The treasurer of each county shall collect all such taxes and on the first day of each and every month transmit all such taxes so collected prior thereto, and not yet transmitted, to the State Treasurer, who shall give him a receipt therefor, of which collection and payment he shall make report under

oath to the Auditor of Public Accounts, on the first day of each and every month, stating for what estate paid, and in such form and containing such particulars, as the Auditor may prescribe. If any county treasurer shall fail to pay to the State Treasurer all taxes that may be due and payable under this act, as prescribed herein, such county treasurer shall pay to the State, as a penalty for such failure, a sum of money equal to the interest on such taxes at the rate of one-tenth of one per cent per day from the time such taxes are collected by said county treasurer until such taxes are paid. The sureties upon the official bond of such county treasurer shall be security for the payment of such penalty. The penalty in this section provided may be recovered in an action of debt against such county treasurer and his sureties aforesaid, in the name of the People of the State of Illinois, in any court of competent jurisdiction within the county wherein such county treasurer is resident; and such penalty, when recovered, shall be paid into the State treasury. Such action shall be brought by the State Treasurer within ten days after the failure of such county treasurer to pay to the State Treasurer any taxes collected by him, at the time required by this act. Failure to bring suit within such time shall not prevent the bringing of such suit thereafter. And it is hereby made the duty of the State Treasurer to make necessary and proper investigations to determine what inheritance tax should be paid: *Provided, however,* that this section shall not invalidate or increase the liability upon the bond of any county treasurer in force prior to the passage of this act, and that to such extent as its application to any such existing bond would result in invalidating such bond or increasing the liability thereon, this section shall be inapplicable thereto. [Amended by Act filed May 7, in force July 1, 1917. Laws 1917, p. 656.]

#### 20. *Collection Expenses, Retention by County.*

§ 21. The treasurer of each county shall retain and pay into the county treasury two per cent (2%) on all taxes paid and accounted for by him under this act, in full for all services and expenses rendered, incurred or paid by the county or any of its officers, agents, or employees, in collecting and paying the same. [Amended by Act approved June 25, in force July 1, 1915. Laws 1915, p. 572.]

#### 21. *Inheritance Tax Receipts.*

§ 22. Any person or body politic or corporate shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt at his option that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office which receipt shall designate on what real property, if any, of which any deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in a book to be kept by said clerk for such purpose.

#### 22. *Petition Contesting Liability, Parties, Judgment, Appeal, Costs.*

§ 23. When any person interested in any property in this State, which shall have been transferred within the meaning of this act shall deem the same not subject to any tax under this act, he may file his petition in the County Court of the proper county to determine whether said property is subject to the tax herein provided, in which petition the county treasurer and all persons known to have or claim any interest in said property shall be made parties. The County Court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases. An adjudication by the County Court, as herein provided, shall be conclusive as to the lien of the tax herein provided upon said property, subject to appeal to the Supreme Court of the State by the county treasurer,

or Attorney General of the State, in behalf of the people, or by any party having an interest in said property. The fees and costs in all cases arising under this section shall be the same as are now or may hereafter be allowed by law in cases at law in the County Court.

*23. Lien, Limitation.*

§ 24. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: *Provided*, that said lien shall be limited to the property chargeable therewith: *And, provided, further*, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchaser of real estate.

*24. Contingent Remainders, Estate in Expectancy, Appraisement, Refunds, Life Estates.*

§ 25. When property is transferred or limited in trust or otherwise, and the rights, interest or estates of the transferees or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred: *Provided, however*, that on the happening of any contingency whereby the said property, or any part thereof is transferred to a person, corporation or institution exempt from taxation under the provisions of the inheritance tax laws of this State, or to any person, corporation or institution taxable at a rate less than the rate imposed and paid, such person, corporation or institution shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person, corporation or institution should pay under the inheritance tax laws, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of over-payment shall be made in the manner provided for refunds under section eight.

Estates or interests in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or account of any valuation theretofore made of the particular estates for the purposes of taxation, upon which said estates or interests in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

*25. Compositions or Settlements, Authority, Execution.*

§ 26. The State Treasurer, by and with the consent of the Attorney General expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under an act to tax gifts, legacies, and inheritances, etc., in force July 1, 1885, [1895] and amendments thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition: *Provided, however*, that no such composition shall be conclusive, in favor of said trustees as against the interests of such *cestuis que trust* as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian. Composition or settlement made or effected under the provisions of

this section shall be executed in triplicate, and one copy filed in the office of the State Treasurer, one copy in the office of the clerk of the County Court wherein the appraisalment was had or the tax was paid, and one copy delivered to the executors, administrators or trustees who shall be parties thereto.

*26. Guardian, Appointment.*

§ 27. If it appears at any stage of an inheritance tax proceeding that any person known to be interested therein is an infant or person under disability, the county judge may appoint a special guardian of such infant or person under disability.

*27. Exemptions.*

§ 28. When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members.

*28. Transfer Defined.*

§ 29. When property, or any interest therein or income therefrom, shall pass to or for the use of any person, institution or corporation by the death of another, by deed, instrument or memoranda, such passing shall be deemed a transfer within the meaning of this act, and taxable at the same rates, and be appraised in the same manner and subjected to the same duties and liabilities as any other form of transfer provided in this act.

*29. Records, Certified Copies, Fees.*

§ 30. On the written request of the county treasurer or county judge, in the county wherein an appraisalment has been initiated, the clerk of the County Court and in counties having a Probate Court, the clerk of the Probate Court and the recorder of deeds, shall furnish certified copies of all papers within their care or custody, or records material in the particular appraisalment, and the said clerk and recorder shall receive the same fee or compensation for such certified copies as they would be entitled by law in other cases, which shall be paid to them by the county treasurer of the proper county, out of moneys in his hands on account of inheritance tax collections, on the presentation of itemized bills therefor, approved by the county judge of the proper county.

*30. Repeal.*

§ 31. That "An Act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, as amended by act approved May 10, 1901, in force July 1, 1901, and all laws or parts of laws inconsistent herewith be and the same are hereby repealed: *Provided, however*, that such repeal shall in no wise affect any suit, prosecution or court proceeding pending at the time this act shall take effect, or any right which the State of Illinois may have at the time of taking effect of this act, to claim a tax upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been commenced; and all appeals and rights of appeal in all suits pending, or appeals from assessments of tax made by appraisers' reports, orders fixing tax or otherwise existing in this State at the time of the taking effect of this act.

**Note:** The amendment of 1919 affected only the rates and exemptions.

**Prior Statutes:** 1887, p. 183; 1891, p. 137; 1895, p. 301; 1901, p. 268.

## INDIANA.

Taxes real estate and tangible property within the State of nonresidents. Substantially copies the New York statute of 1911 except as to rates and exemptions.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Rates of tax				
		Above exemption up to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor of decedent, adopted or mutually acknowledged child, or issue of same.	Widow, \$10,000, all others, \$2,000.	1%	1½%	2%	2½%	3%
Brother or sister or their descendants wife or widow of son, husband of daughter.	\$500	1½%	2½%	3%	3½%	4½%
Aunt, uncle or their descendants.	\$350	3%	4½%	6%	7½%	9%
Brother or sister of grandparents or their descendants.	\$150	4%	6%	8%	10%	12%
All others, except charitable bequests, exempted by section 4.	\$100	5%	7½%	10%	12½%	15%

## LAWS 1913, CHAPTER 47, BECAME A LAW FEBRUARY 28, 1913.

(As amended by Laws of 1917, which did not change rates or exemptions.)

Section 1. Be it enacted by the General Assembly of the State of Indiana, that a tax shall be imposed upon any transfer of property, real, personal or mixed, or any interest therein or income therefrom in trust or otherwise to any person, association or corporation, except county, town or municipal corporations for strictly county, town, municipal purposes, or to the bishop, rector, pastor, trustee, board of trustees, or governing body of any educational or religious institution who shall use the property so transferred solely for religious, charitable, or educational purposes, within the State, and corporations of this State organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within the State, in the following cases:

1. When the transfer is by will or by the intestate laws of this State of any intangible property, or of tangible property within the State, from any person dying seized or possessed thereof while a resident of the State.

2. When the transfer is by will or intestate law, of tangible property within the State, and the decedent was a nonresident of the State at the time of his death.

3. Whenever the property of a resident decedent, or the property of a non-resident decedent within this State transferred by will is not specifically bequeathed or devised such property shall, for the purposes of this article, be deemed to be transferred proportionally to and divided *pro rata* among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will.

4. When the transfer is intangible property or of tangible property within the State, made by a resident, or of tangible property within the State made by a nonresident, by deed, grant, bargain, sale or gift made in contemplation

of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death.

**Note.**—By the amendment of 1917 the following was added to subd. 4: "Provided that any conveyance, gift or transfer made within two years of the death of any decedent, without consideration, save except love and affection, shall be conclusively presumed to have been made in contemplation of death."

5. When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer, whether made before or after the passage of this act.

6. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.

7. The tax, so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

§ 4. The following exemptions from the tax are hereby allowed:

1. All property transferred to municipal corporations within the State for strictly county, town or municipal purposes, or to the bishop, rector, pastor, trustee, board of trustees, or governing body of any educational or religious institution who shall use the property, so transferred solely for religious, charitable or educational purposes, within the State, or to corporations of this State organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred, exclusively for the purpose of their organization, within the State, shall be exempt.

**Note.**—The amendment of 1917 adds the following: "said exemptions to be taken out of the first twenty-five thousand dollars of each beneficial interest in the estate."

The rest of section 4 prescribes the exemptions set forth in the table.

§ 5. Makes the tax a lien, the executor or administrator personally liable and he must produce receipt to obtain final accounting.

§ 6. If such tax is paid within one year from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued, unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause or delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged.

In all cases when a bond shall be given under the provisions of section 9 of this act, interest shall be charged at the rate of six per centum from the accrual of the tax, until the date of payment thereof.

§ 7. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate.

Any such administrator, executor or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom, and within thirty days therefrom shall pay over the same to the county treasurer as herein provided.

If such legacy or property be not in money he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto.

He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor or trustee and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced

by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the prosecuting attorney under section 16 of this act.

If any such legacy be given in money to any such person for a limited period, the administrator, executor or trustee shall retain the tax on the whole amount, but if it be not in money he shall make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

§ 8. If any debt shall be proved against the estate of the decedent after the payment of the legacy, or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by the order of the Circuit Court having jurisdiction thereof on notice to the Auditor of State to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee if the tax has not been paid to the county treasurer or repaid by such treasurer or State Treasurer, if such tax has been paid to him. When any amount of said tax shall have been paid erroneously into the State treasury it shall be lawful for the Auditor of State, upon satisfactory proofs presented to him of the facts, to require the amount of such erroneous or illegal payment to be refunded to the executor, administrator, trustee, person or persons who have paid any such tax in error from the treasury; or the said Auditor of State may order, direct and allow the treasurer of any county to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody to the credit of such taxes, and credit him with the same in his quarterly account rendered to the Auditor of State under this act; *provided, however*, that all applications for such refunding of erroneous taxes shall be made within one year from the payment thereof, or within one year after the reversal or modification of the order fixing such tax.

§ 9. Any beneficiary of any property chargeable with a tax under this act and any executors, administrators and trustees thereof may elect within eighteen months from the date of the transfer thereof as herein provided not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. The person or persons so elected shall give a bond to the State in a penalty of three times the amount of any such tax, with such sureties as the Circuit Court of the proper county may approve, conditioned for the payments of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the Circuit Court. Such bond must be executed and filed and a full return of such property upon oath made to the Circuit Court within one year from the date of such transfer thereof as herein provided, and such bond must be renewed every five years.

§ 10. Whenever a decedent appoints one or more executors or trustees and in lieu of their allowance makes a devise or bequest of money or property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said devises or bequests, or residuary legacies, exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts shall fix the amount of their compensation.

§ 11. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this State standing in the name of a decedent liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request unless notice of the time and place of such intended transfer be served upon the Auditor of State and county treasurer at least ten days prior to said transfer; nor shall any such safe deposit company, bank or other institution, person or persons deliver or trans-



fer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of this act unless the Auditor of State consents thereto in writing; and it shall be lawful for the said county treasurer or Auditor of State personally, or by representative, to examine all securities or assets at the time of such delivery or transfer.

Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this act.

§ 12. Gives the Circuit Court having jurisdiction to grant letters the jurisdiction in transfer tax matters.

§ 13. Subdivision 1 was amended by the Laws of 1917 to read as follows:

“The Circuit Court upon the application of any interested party, including the Auditor of State, State board of tax commissioners, county treasurer, or upon its own motion, shall order the county assessor of the county where said court is sitting, or the inheritance tax appraiser, as the case may be, to fix the fair market value at the time of the transfer thereof of the property of persons whose estates shall be subject to the payment of any tax imposed by this act; and the executors, administrators or trustees of said estates shall, within thirty days of the making of said order by the court, file with said appraiser, a complete schedule of all the property, both real and personal, of which the decedent died seized, or possessed, and all property, both real and personal, which said decedent transferred or conveyed within two years of his death, without valuable consideration, together with an itemized statement of the indebtedness of said decedent: *provided*, that if said county assessor be related to the decedent or any beneficiary by consanguinity or affinity, within the third degree, said county assessor shall thereby be disqualified to appraise said property and said court shall appoint a competent and qualified person to appraise said property.”

§§ 14 to 25. Provide the usual proceedings for the valuation of estates and the collection of the tax, closely following the New York practice. All the provisions regarding life estates and remainders and the present taxation of remainders at the highest possible rate are adopted from the New York statute, including the provision for the compromise of uncertain tax claims. Life estates and remainders are computed on mortality tables on the 5% basis.

§ 26. 1. The words “estate” and “property,” as used in this act, shall be taken to mean the property or interest therein passing or transferred to individual or corporate legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and not as the property or interest therein of the decedent, grantor, donor or vendor, and shall include all property or interest therein, whether situated within or without this State.

2. The words “tangible property,” as used in this act, shall be taken to mean corporeal property such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in bank, shares of stock, bonds, notes, credits, or evidences of an interest in property or evidences of debt.

3. The words “intangible property,” as used in this act, shall be taken to mean incorporeal property, including money, deposits in banks, shares of stock, bonds, notes, credits, evidences of an interest in property and evidences of debt.

4. The word “transfer,” as used in this act, shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein described.

5. The words “the intestate laws of this State,” as used in this act, shall be taken to refer to all transfers of property, or any beneficial interest therein, effected by the statute of descent and distribution and the transfer of any

property, or any beneficial interest therein, effected by operation of law upon the death of a person omitting to make a valid disposition thereof.

§ 27. All taxes levied and collected under this act, less any expenses of collection, shall be paid into the treasury of the State for the use of the State, and shall be applicable to the expenses of the State government, and to such other purposes as the Legislature may by law direct.

§ 28. Wherever a power is conferred by this act upon the Circuit Court the same power shall be deemed to be conferred upon the probate and superior courts in those counties which have a probate or superior court as a court of record with jurisdiction in probate matters.

**Prior Statutes:** None.

#### AMENDMENTS OF 1919.

An act concerning soldiers' and sailors' estates was adopted and approved March 15, 1919, reading as follows:

"The taxes provided for by the inheritance tax law, approved February 28, 1913, and in all acts supplementary thereto, shall not apply to the transfer of the estate of any decedent leaving an estate of less than twenty-five thousand dollars (\$25,000) dying or who has died while serving in the military or naval forces of the United States during the continuance of the war in which the United States is now, or has been engaged or if death results from injuries received or disease contracted in such service, within one (1) year after the termination of such war; but that such tax shall be remitted by the State. For the purpose of this law the termination of the war shall be evidenced by the proclamation of the President of the United States.

"§ 2. Whereas an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage and shall apply to all such estates now pending."

An act concerning taxation, approved March 11, 1919, section 160, relates to inheritance tax and is as follows:

"In counties having a population of less than two hundred thousand according to the last preceding United States census, the judge of each court having probate jurisdiction may appoint the county assessor of his county appraiser of estates provided for in law for the appraisement and collection of taxes in the State of Indiana on gifts, inheritances, bequests, legacies, devises and successions, and if so appointed and acting said county assessor shall receive such compensation for said service in addition to his salary as may be fixed by the court to be paid him as now provided by law; or the court may determine the amount of said inheritance tax without the reference thereof to the county assessor for appraisement: Provided, however, That if said county assessor be a beneficiary of any estate to be appraised as provided by the last said named act, or related by affinity or consanguinity to any beneficiary of such estate, then said county assessor shall not be the appraiser of said estate: Provided, further, That in all counties in this State containing a population of more than two hundred thousand according to the last preceding United States census, the Governor of the State of Indiana shall appoint a competent person to be known as the inheritance tax appraiser of such county, whose duties shall be to appraise each and every estate that may be subject to tax imposed by the last above entitled act, and to perform each and every duty required by the inheritance tax appraiser in such act provided for, who shall receive a salary of twenty-four hundred dollars per annum, payable monthly, out of the county treasury, which shall be a part of the expense of collecting such tax and who shall hold office during the term of four years. Such appraiser last mentioned shall appoint a competent stenographic clerk to assist him at a salary of nine hundred dollars per annum, to be paid monthly out of the county treasury, as a part of the expenses of collecting such inheritance tax. Such county shall furnish such inheritance tax appraiser with an office, and he shall be allowed his actual and necessary expenses for office furniture, fixtures, files, records, maps, platbooks, and other articles necessary for the proper

conduct of the business, to be paid out of the county treasury as a part of the expenses of collecting the tax."

An act approved March 10, 1919, relating to highways, provides that the proceeds of the inheritance tax paid into the State treasury shall go to the State highway fund. (Acts 1919, chapter 53, section 31.)

## IOWA.

**Taxes only collaterals and strangers whether resident or non-resident.**

CLASS OR RELATIONSHIP	Exemptions	Rates
Husband, wife, father, mother, lineal descendant, adopted child or lineal descendant of such child.	All	None
Religious and educational societies, public libraries and art galleries, public hospitals, charitable and cemetery associations.	All	None
Alien non-resident of United States, brother or sister.....	If less than \$1,000.	10%
All other aliens not residents of the United States.....	If less than \$1,000.	20%
All others.....	If less than \$1,000.	5%

**Note:** As to tax against aliens see *Peterson v. Iowa*, 245 U. S. 170, 38 Sup. Ct. Rep. 109; *Duns v. Brown*, 245 U. S. 176, 38 Sup. Ct. Rep. 111.

### LAWS OF 1911, CHAPTER 68.

Section 1. The estates of all deceased persons, whether they be inhabitants of this State or not, and whether such estates consist of real, personal or mixed property, tangible or intangible, and any interest in, or income from any such estate or property, which property is, at the death of the decedent owner, within this State or is subject to, or thereafter, for the purpose of distribution, is brought within this State and becomes subject to the jurisdiction of the courts of this State, or the property of any decedent, domiciled within this State at the time of the death of such decedent, even though the property of such decedent so domiciled was situated outside of the State, except real estate located outside of the State passing in fee from the decedent owner, which shall pass by will or by the statutes of inheritance of this or any other State or country, or by deed, grant, sale, gift or transfer made in contemplation of the death of the donor, or made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person, or for any use in trust or otherwise, other than to or for the use of persons, or uses exempt by this act shall be subject to a tax.

The rest of the section and the first five subdivisions of section 2 are covered by the foregoing table.

§ 2. Subd. 6. Bequests for the care and maintenance of the cemetery or burial lot of decedent and his family, and bequests not to exceed five hundred dollars (\$500.00) in any estate, to or for the performance of a religious service or services by some person regularly ordained, authorized or licensed by any religious society to perform such service to be performed for or in behalf of the testator, or some person named in his last will, provided such person so named is, or would be exempt from the tax imposed by this act.

Subd. 7. When the property passes to a municipal or political corporation within this State for a purely public purpose.

§ 3. The term "debts" as used in this act shall include, in addition to

debts owing by the decedent at the time of his death, the local or State taxes due from the estate in January of the year of his death, a reasonable sum for funeral expenses, court costs, the cost of appraisement made for the purpose of assessing the collateral inheritance tax, the statutory fees of executors, administrators or trustees estimated upon the appraised value of the property, the amount paid by the executor or administrator for a bond, the attorney fee in a reasonable amount to be approved by the court, for the ordinary probate proceedings in said estate, and no other sum; but said debts shall not be deducted unless the same are approved and allowed by the court within eighteen (18) months from the death of the decedent, as established claims against the estate, unless otherwise ordered by the judge or court of the proper county.

§ 4. If no will is offered or administration had within four months the State Treasurer may apply.

§ 5. Provides for the appointment of appraisers.

Sections 6, 7 and 8 provide for proceedings before appraisers, notice to parties in interest, objections and appeal to the court for reappraisal.

§ 9. Requires an appraisal at market value within ninety days.

§ 10. Provides that where value is certain appraisal may be dispensed with on consent of the Treasurer.

Sections 11 and 12 provide for the immediate taxation of life estates and remainders.

Sections 13 and 14 provide for the filing of a bond by remainderman and its renewal every two years if it is desired to postpone payment of tax until the remainder falls in; but this need not be done if part of the remainder is in real estate and the tax is secured by its lien thereon.

§ 15. Provides that the bond shall be twice the amount of the tax and in no case less than \$500.

§ 16. Imposes a fine of \$200 for removing property from the State liable to tax without paying it or filing a bond.

§ 17. Provides for determining value of life estates and remainders by mortality tables on basis of 4%.

Sections 18 and 19 require the executor or administrator to collect the tax from the beneficiaries, gives them power of sale of property to pay it, and gives the State Treasurer right of action for tax against executors or administrators or beneficiaries. The court may extend time of payment on filing a bond. If the legacy is in money the amount of the tax may be deducted.

§ 20. Provides that no final settlement of accounts shall be allowed unless it shows that the tax has been paid.

§ 21. Gives the district court having probate jurisdiction the jurisdiction over tax proceedings.

§ 22. Taxes excess over reasonable compensation of bequest to executors in lieu of commissions.

§ 23. Where legacy charged on real estate heir must deduct tax before paying same and tax declared a lien.

§ 24. Taxes must be paid within 18 months of death, thereafter interest at 8%.

§ 25. The Treasurer may require information as to estate from executors or administrators before issuing receipt for tax.

§ 26. Requires records of tax liens to be kept by the court.

§ 27. Upon the appointment and qualification of such executor, administrator and testamentary trustee, the clerk issuing the letters shall at the same time deliver to him a blank form upon which he shall be required to make detailed report of the following facts:

- (1) Name and last residence of decedent.
- (2) Date of death.
- (3) Whether or not he left a will.
- (4) Name and post-office of executor, administrator or trustee.
- (5) Name and post-office of surviving wife or husband if any.
- (6) If testate, name and post-office of each beneficiary under will.
- (7) Relationship of each beneficiary to the testator.

(8) If intestate, name and post-office of each heir at law.

(9) Relationship of each heir at law to decedent.

(10) Inventory of all real estate of the decedent, giving amount and description of each tract.

(11) Whether the property passes in possession and enjoyment in fee for life or for a term of years.

Within thirty days after his qualification, each executor, administrator and testamentary trustee shall make and return to the clerk, under oath, a full and detailed report as indicated in the preceding paragraph, any will to the contrary notwithstanding, and upon his failure to do so, the clerk shall forthwith report his delinquency to the district court if in session, or to a judge of said court if in vacation, for such order as may be necessary to enforce an observance of this section. If it appears from the inventory or report so filed that the real estate or any part of it is subject to an inheritance tax it shall be the duty of the executor or administrator or of any person interested in the property if there be no administration, to cause a lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular tract of said real estate is situated, and when said real estate or any interest therein, is subject to such tax, no conveyance either before or after the entering of said lien, shall discharge the real estate so conveyed from said lien, no final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless a strict compliance with the provisions of this section has been had by such person. Upon the filing of such report, the clerk of the court, shall immediately forward a true copy thereof to the Treasurer of State.

§ 28. Permits the court to extend time for filing inventory.

§ 29. Requires persons entitled to property subject to tax within ninety days to make report to the court similar to that required by section 27.

§§ 30-31. Provide for records to be kept by the clerk of the county court.

§ 32. Prescribes reports to be made by the clerks.

§§ 33-35. Prescribe the duties of county attorneys in collecting the tax, regulate their fees and require them to make reports to the court.

§ 36. Regulates costs.

§ 37. No safe deposit company, trust company, bank or other institution, person or persons holding securities or assets of the decedent shall deliver or transfer the same to the executor, administrator or legal representative of said decedent unless the tax for which such securities or assets are liable under this act shall be first paid, or the payment thereof is secured by bond as herein provided. It shall be lawful for and the duty of the Treasurer of State personally, or by any person by him duly authorized, to examine such securities or assets at the time of any proposed delivery or transfer. Failure to serve ten days' notice of such proposed transfer upon the Treasurer of State or to allow such examination on the delivery of such securities or assets to such executor, administrator or legal representative shall render such safe deposit company, trust company, bank or other institution, person or persons liable for the payment of the tax upon such securities or assets as provided in this act.

§ 38. If a foreign executor, administrator or trustee shall assign or transfer any corporate stock or obligations in this State standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the Treasurer of State on or before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, interest and costs and it is the duty of the Treasurer of State to enforce the payment thereof.

§ 39. All Iowa corporations organized for pecuniary profit, shall on July 1st of each year, by its proper officers under oath make a full and correct report to the Treasurer of State of all transfers of its stocks made during the preceding year by any person who appears on the books of such corporation as the owner of such stock, when such transfer is made to take effect at or after the death of the owner or transferor, and all transfers which are made by an administrator, executor, trustee, referee, or any person other than the

owner or person in whose name the stocks appeared of record on the books of such corporation, prior to the transfer thereof. Such report shall show the name of the owner of such stocks and his place of residence, the name of the person at whose request the stock was transferred, his place of residence and the authority by virtue of which he acted in making such transfer, the name of the person to whom the transfer was made, and the residence of such person; together with such other information as the officers reporting may have relating to estates of persons deceased who may have been owners of stock in such corporation. If it appears that any such stock so transferred is subject to tax under the provisions of this act, and the tax has not been paid, the Treasurer of State shall notify the corporation in writing of its liability for the payment thereof, and shall bring suit against such corporation as in other cases herein provided unless payment of the tax is made within sixty (60) days from the date of such notice.

§ 40. Whenever any property belonging to a foreign estate, which estate in whole or in part passes to persons not exempt herein from such tax, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this State. In the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the Treasurer of State, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this State bears to the value of the entire estate.

§ 41. Whenever any property, real or personal, within this State belongs to a foreign estate and said foreign estate passes in part exempt from the tax imposed by this act and in part subject to said tax and there is no specific devise of the property within this State to direct heirs or if it is within the authority or discretion of the foreign executor, administrator or trustee administering the estate to dispose of the property not specifically devised to direct heirs or devisees in the payment of debts owing by the decedent at the time of his death, or in the satisfaction of legacies, devises, or trusts given to direct or collateral legatees or devisees or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this State, belonging to such foreign estate, shall be subject to the tax imposed by this act, and the tax due thereon shall be assessed as provided in the next preceding section of this act relating to the deduction of the proportionate share of indebtedness. Provided, however, that if the value of the property so situated exceeds the total amount of the estate passing to other persons than those exempt hereby from the tax imposed by this act such excess shall not be subject to said tax.

§ 42. Provides for the compromise of uncertain tax claims by the State Treasurer and Attorney-General.

§ 43. Whenever the heirs or persons entitled to any estate, or any interest therein, are unknown or their place of residence cannot with reasonable certainty be ascertained, a tax of 5% shall be paid to the Treasurer of State upon all such estates or interests, subject to refund as provided herein in other cases; provided, however, that if it be afterwards determined that any estate or interest passes to aliens, there shall be paid within sixty (60) days after such determination and before delivery of such estate or property an amount equal to the difference between 5 per centum, the amount paid, and the amount which such person should pay under the provisions of this act.

§ 44. When within five years after the payment of the tax, a court of competent jurisdiction may determine that property upon which a collateral inheritance tax has been paid is not subject to or liable for the payment of such tax, or that the amount of tax paid was excessive, so much of such tax as has been overpaid to the Treasurer of State shall be returned or refunded

to the executor or administrator of such estate, or to those entitled thereto, when a certified copy of the record of such court showing the fact of non-liability of such property to the payment of such tax has been filed with the executive council of the State, the executive council shall if the case has been finally determined issue an order to the Auditor of State directing him to issue a warrant upon the Treasurer of State to refund such tax. Such order of court shall not be given until fifteen days' notice of the application therefor shall have been given to the Treasurer of State of the time and place of the hearing of such application, which notice shall be served in the same manner as provided for original notices.

§ 45. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

When an estate, devise, or legacy can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

When a devise, bequest or transfer is one in part contingent, and in part vested so that the beneficiary will come into possession and enjoyment of a portion of his inheritance on or before the happening of the event upon which the possible defeating contingency is based, a tax shall be imposed and collected upon such bequest or transfer as upon a vested interest, at the highest rate possible under the terms of this act if no such contingency existed; provided, that in the event such contingency reduces the value of the estate or interest so taxed, and the amount of tax so paid is in excess of the tax for which such bequest or transfer is liable upon the removal of such contingency, such excess shall be refunded as is provided in section forty-four (44) of this act in other cases.

§ 46. In the construction of this act, the words "collateral heirs" shall be held to mean all persons who are not specifically exempt from the tax imposed by the provisions hereof. The word "person" shall include a plural as well as singular, and artificial as well as natural persons. This act shall not be construed to confer upon a county attorney authority to represent the State in any case, and he shall represent the Treasurer of State only when especially authorized by him to do so. This act shall apply to all estates subject to taxation under the law repealed by this act if the tax for which such estates are liable shall not have been paid prior to the taking effect of this act.

§ 47. Provides for records to be kept by the State Treasurer.

§ 48. Repeals former statutes.

**Prior Statutes:** 1896, Vol. 26, ch. 28; 1898, Vol. 27, ch. 37; 1900, Vol. 28, ch. 51; 1902, Vol. 29, chapters 55 and 63; 1904, Vol. 30, ch. 51; 1906, Vol. 31, ch. 54; 1909, Vol. 33, ch. 92.

**Amendments:** Unimportant amendments are made by L. 1913, chapters 120 and 121.

## KANSAS.

Taxes all property of nonresident decedents within the State, including stock of domestic corporations, but not their bonds.

The original enactment was chapter 248, Laws of 1909, which became effective by publication March 16, 1909. On January 25, 1913, the chapter was repealed without any substitution by chapter 330, Laws of 1913, and for two years Kansas had no law. You will note, however, from the decisions of the Supreme Court contained in the pamphlet sent you in a separate inclosure that on account of the general saving clause in the Kansas statute the obligations of the law, notwithstanding its repeal, continue as to all estates of decedents who died during the four years the law was upon the statute book. (State v. A., T. & S. R. R. Co., 99 Kan. 831, 163 Pac. 157; Re Mosely, 100 Kan. 495; State v. U. S. Trust Co., 99 Kan. 841.)

The Legislature of 1915 enacted chapter 357, Session Laws of that year, which became effective by publication on April 10, 1915. This, however, was a collateral law.

The Legislature of 1917 enacted chapter 319, amending the law in some particulars, but not in respect of beneficiaries, exemptions or rates.

The Legislature of 1919 enacted chapter 305, which restores the tax upon direct successions, but in a way which really recognizes only the principle of such taxation as being correct. The exemptions are so large as to appear almost farcical. This law became effective March 29, 1919.

By reason of one of the amendments made as aforesaid by the Legislature of 1917 property passing by power of appointment has been subject to the law since March 26, 1917.

SCHEDULES OF RATES APPLICABLE IN THE TAXATION OF LEGACIES AND SUCCESSIONS  
AS PROVIDED IN SECTION 1, CHAPTER 248, LAWS OF 1909.

Indication of Relationship.	Rates Applicable				
	On amounts up to and including \$25,000.	On amounts from \$25,000 to \$50,000.	On amounts from \$50,000 to \$100,000.	On amounts from \$100,000 to \$500,000.	On amounts in excess of \$500,000.
<b>Class A.</b>	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
Husband, wife, lineal ancestor, lineal descendant, adopted child, lineal descendant of any adopted child, wife or widow of a son, or husband of a daughter.	1	2	3	4	5
<b>Class B.</b>					
Brother, sister, nephew, or niece.	3	5	7½	10	12½
<b>Class C.</b>					
Persons in other degrees of collateral consanguinity, strangers or others not included in Class A and B.	5	7½	10	12½	15

## NOTES.

1. As to Class A, the law does not become operative until the legacy or succession exceeds \$5,000, when the legatee, devisee or beneficiary is the husband, wife, father, mother, child or adopted child of the deceased.
2. As to Class B, the law does not become operative until the legacy or succession exceeds \$1,000.
3. As to all persons not included in the exceptions stated in Note 1 and Note 2 above, the law becomes operative as to all legacies and successions, no matter how small.



**SCHEDULE OF RATES APPLICABLE IN THE TAXATION OF LEGACIES AND SUCCESSIONS, 1915.**

Indication of Relationship.	Rates Applicable				
	On amounts up to and including \$25,000.	On amounts from \$25,000 to \$50,000.	On amounts from \$50,000 to \$100,000.	On amounts from \$100,000 to \$500,000.	On amounts in excess of \$500,000.
<b>Class A.</b> Husband, wife, lineal ancestor, lineal descendant, adopted child, lineal descendant of any adopted child, wife or widow of a son, or husband of a daughter.	Per cent. None.	Per cent. None.	Per cent. None.	Per cent. None.	Per cent. None.
<b>Class B.</b> Brothers and sisters.	3	5	7½	10	12½
<b>Class C.</b> Persons in other degrees of collateral consanguinity, strangers or others not included in Class A and B.	5	7½	10	12½	15

**NOTE.**

1. The members of Class A incur no tax liability under the law, the full amount of their shares being exempt.
2. The members of Class B have an exemption of \$5,000, and if the amount above \$5,000 is less than \$200, no tax is charged.
3. No exemptions are allowed to members of Class C; but if the amount is less than \$200, no tax is chargeable.

**SCHEDULE OF RATES APPLICABLE IN THE TAXATION OF LEGACIES AND SUCCESSIONS AS PROVIDED BY HOUSE BILL NO. 415, ENACTED BY THE LEGISLATURE OF 1919, EFFECTIVE MARCH 29, 1919.**

Indication of Relationship.	Rates Applicable				
	On amounts up to and including \$25,000.	On amounts from \$25,000 to \$50,000.	On amounts from \$50,000 to \$100,000.	On amounts from \$100,000 to \$500,000.	On amounts in excess of \$500,000.
<b>Class A.</b> Wife.	Per cent. ½	Per cent. 1	Per cent. 1½	Per cent. 2	Per cent. 2½
Husband, lineal ancestor, lineal descendant, adopted child, lineal descendant of any adopted child, wife or widow of a son, or husband of a daughter.	1	2	3	4	5
<b>Class B.</b> Brothers and sisters.	3	5	7½	10	12½
<b>Class C.</b> Persons in other degrees of collateral consanguinity, strangers or others not included in Classes A and B.	5	7½	10	12½	15

**NOTE.**

1. Exemptions are allowed as follows: To the wife, \$75,000; to each other member of Class A, \$15,000; to each member of Class B, \$5,000; members of Class C have no exemption.
2. The rates above named are charged only on amounts in excess of the exemptions allowed; when the share is less than \$200 in excess of the exemption no tax is charged.

**LAWS 1915, CHAPTER 357, BECAME A LAW APRIL 10, 1915.**

*(Amended as to procedure by Chapter 319, L. 1917, and as to rates by Chapter 305, L. 1919.)*

Section 1. All property, corporeal or incorporeal, and any interest therein, within the jurisdiction of the State, whether belonging to the inhabitants of the State or not, which shall pass by will or by the laws regulating intestate succession, or by deed, grant or gift made in contemplation of death, or made or intended to take effect in possession or enjoyment after the death of the grantor, to any person, absolutely or in trust—except in case of a *bona fide* purchase for full consideration in money or money's worth; and except property to or for the use of literary, educational, scientific, religious, benevolent and charitable societies or institutions: *Provided*, such use entitles the property so passing to be exempt from taxation; and except property to or for the use of the State, a county or a municipality for public purposes; shall be taxed as herein provided.

The section then prescribes the rates and exemptions as shown in the foregoing table.

§ 2. Provides that the tax shall be due within one year of death, or, if a gift in contemplation of death, at the time of the transfer, makes the tax a lien but provides that the lien on personal property is satisfied if it is sold for value by an executor or administrator and, in case of real estate, if a bond to pay the tax is filed.

§ 3. Provides that remaindermen may defer payment of tax until remainder falls in by filing a sufficient bond and renewing it every five years.

§ 4. Provides for the valuation of life estates and remainders on American experience tables on the basis of 5% and makes further provision for the filing of a bond by remaindermen in three times the amount of the tax if payment is elected to be deferred.

§ 5. Provides for payment of tax on contingent remainders when they accrue at their full value undiminished by the life estate and for compromise of tax in such cases on consent of the Attorney-General.

§ 6. Requires the executor or administrator to deduct the tax from money legacy or distributive share or to collect it from beneficiary before delivery of property.

§ 7. Requires the heir to deduct the tax before paying legacy when it is a charge on real estate.

§ 8. Provides that where the will directs payment of the tax out of a fund no tax shall be charged against the amount so appropriated.

§ 9. Provides that the probate court may authorize the sale of real estate to pay the tax as in case of debts.

§ 10. An inventory and appraisal under oath of every estate shall be filed in the probate court by the executor, administrator or trustee within three months after his appointment. If he neglects or refuses to file such inventory and appraisal he shall be liable to a penalty of not more than five thousand dollars, which shall be recovered in the proper district court by the Attorney-General or county attorney of the proper county at the instance of the tax commission, in the name of the State, for the use of the State; and the probate judge shall notify the tax commission within thirty days after the expiration of said three months of the failure of any executor, administrator or trustee to file an inventory and appraisal in his office.

§ 11. The probate judge shall record the inventory and appraisal of every estate which is filed in his office, and he shall, within thirty days after the same has been filed, send by mail to the tax commission such inventory and appraisal or a copy thereof. The probate judge shall also, within the same period, send by mail to the tax commission a copy of the will of the decedent, if such has been allowed by the probate court. The probate judge shall also furnish such copies of papers in his office as the tax commission shall require, and shall furnish information as to the records and files in his office in such form as the tax commission may require. The tax commission shall excuse the probate court from filing inventories or copies of inventories and of wills

of estates no part of which appears to be subject to a tax under the provisions of this chapter.

§ 12. Provides that where it is made to appear by petition of any party in interest that administration is not necessary except to determine the tax, if any, the tax proceedings may be had on such petition. If no will has been offered or administration had within three months the tax commission may proceed in the same way.

§ 13. If a foreign executor, administrator or trustee assigns or transfers any stock in any national bank located in this State or in any corporation organized under the laws of this State owned by a deceased nonresident at the date of his death and liable to a tax under the provisions of this act, the tax shall be paid to the county treasurer of the proper county at the time of such assignment or transfer; and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. A bank located in this State or a corporation organized under the laws of this State which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee, before all taxes imposed thereon by the provisions of this act have been paid, shall be liable for such tax in an action of contract brought by the county attorney of the proper county or the Attorney-General in the name of the State and at the instance of either the probate court or the tax commission.

§ 14. Securities or assets belonging to the estate of a deceased nonresident shall not be delivered or transferred to a foreign executor, administrator or legal representative of said decedent without serving notice upon the tax commission of the time and place of such intended delivery or transfer seven days at least before the time of such delivery or transfer. The tax commission, by any member or by representative, may examine such securities or assets prior to the time of such delivery or transfer. Failure to serve such notice or to allow such examination shall render the person or corporation making the delivery or transfer liable to the payment of the tax due upon said securities or assets, in an action brought by the county attorney of the proper county or the Attorney-General in the name of the State.

§ 15. If a person who has paid such tax afterward refunds a portion of the property on which it was paid, or if it is judicially determined that the whole or any part of such tax ought not to have been paid, such tax, or the due proportion thereof, shall be repaid to him by the executor, administrator or trustee.

§ 16. The value of the property upon which the tax is computed shall be determined by the tax commission and notified by it to the person or persons by whom the tax is payable and to the probate court and county treasurer of the proper county, and such determination shall be final unless the value so determined shall be reduced by proceedings as herein provided. At any time within three months after such determination the probate court shall, upon the application of any party interested in the succession, or on application of the executor, administrator or trustee, appoint three disinterested appraisers, who, first being sworn, shall appraise such property at its actual value in money as of the day of the death of the decedent, and shall make return thereof to said court. Such return, when accepted by said court, shall be final: *Provided*, that any party aggrieved by such appraisal shall have an appeal upon matters of law. One-half of the fees of said appraisers, as determined by the judge of said court, shall be paid by the county treasurer, and one-half of said fees shall be paid by the other party or parties to said proceedings.

The remaining sections 16 to 27 relate to procedure in collecting the tax which are largely repealed by the 1917 amendment.

## AMENDMENT OF 1917.

## CHAPTER 319.

*Relating to the Taxation of Legacies and Successions; State Tax Commission Made Inheritance Tax Commission.*

An Act relating to the assessment and taxation of legacies and successions, creating an Inheritance Tax Commission and amending sections 11219 and 11221 of the General Statutes, 1915, and defining certain terms in sections 11203, 11219 and 11221.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. From and after the passage of this act the Tax Commission shall constitute the Inheritance Tax Commission of the State of Kansas, and shall, as such, be charged with the duty of administering all laws providing for the assessment and taxation of legacies and successions within this State, and all duties relative to legacy and succession taxes and assessment now imposed by law upon the Tax Commission shall be performed by said Inheritance Tax Commission. The member of said commission who has served longest as member of the Tax Commission shall be chairman, and the secretary of the Tax Commission secretary of said Inheritance Tax Commission. The words "Tax Commission" whenever and wherever used in chapter 357, Laws of 1915, and in acts amendatory thereof and supplemental thereto, shall be taken and held to mean Inheritance Tax Commission.

§ 2. That section 11219 of the General Statutes of 1915 be and the same is hereby amended so as to read as follows: Sec. 11219. The Inheritance Tax Commission shall determine the amount of tax due and payable upon any estate or upon any part thereof, and shall certify the amount so due and payable to the probate court and to the county treasurer and to the person or persons by whom the tax is payable; but in the determination of the amount of any tax said Inheritance Tax Commission shall not be required to consider any payments on account of debts or expenses of administration which have not been allowed by the probate court having jurisdiction of the estate. Payment of the amount so certified shall be a discharge of the tax. Any executor, administrator, trustee or grantee who is aggrieved by any determination of said Inheritance Tax Commission may, at any time before said estate shall be finally closed, and after the payment of such tax to the county treasurer, apply by petition to said Inheritance Tax Commission for the abatement of said tax or any part thereof, and if said commission adjudge that said tax or any part thereof was wrongfully exacted it shall order an abatement of such portion of said tax as was assessed without authority of law. Upon final decision ordering an abatement of any portion of said tax the county treasurer shall refund, from any legacy and succession taxes in his hands, the amount adjudged to have been illegally exacted, with interest at the legal rate, without any further act or resolve making appropriation therefor; provided, however, that any such executor, administrator, trustee or grantee may apply to any district court of competent jurisdiction for a review of any such order, and until final decision shall be entered by any such court such money shall not be refunded by said county treasurer.

§ 3. That section 11221 of the General Statutes of 1915 be and the same is hereby amended so as to read as follows: Sec. 11221. The Inheritance Tax Commission, subject to the right of any party interested to apply to any district court of competent jurisdiction for review, shall hear and determine all questions relative to said tax, and the Attorney-General, at the request of the Inheritance Tax Commission or of the county treasurer, shall represent the State in any proceedings brought to review any action of said Inheritance Tax Commission. If any probate court shall find that any such tax remains due and that proper proceedings have not been taken before said Inheritance Tax Commission for abatement thereof, it shall order the executor, administrator, or trustee to pay the same, with interest, and costs, and no question regarding the validity of such tax shall be heard in such court. And if it

appears that there are no such goods or assets of the estate in his hands, the court may assess the amount of the tax against the executor, administrator, or trustee, as if for his own debt, and may enforce compliance with such order by proper procedure, as now authorized by probate practice; but the administrators, executors, trustees and grantees hereinbefore mentioned shall be personally liable only for such taxes as shall be payable while they continue in the said offices or have title as such grantees, respectively. In the cases where the tax is due and payable by and collectible from the beneficiary, all actions shall be prosecuted by the Attorney-General or the county attorney of the proper county in the name of the State, and such actions may be brought in the same courts as other actions for money.

§ 4. Whenever any person shall exercise a power of appointment derived from any disposition of property, such appointment when made shall be deemed to be a disposition of property by the person exercising such power, taxable under the provisions of chapter 357, Laws of 1915, and of all acts and amendments thereof and in addition thereto, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by the donee by will; and whenever any person possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a disposition of property taxable under the provisions of sections 11219 and 11221 of the General Statutes of 1915, and all acts and amendments thereof, and in addition thereto shall be deemed to take place to the extent of such omissions or failure in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power taking effect at the time of such omission or failure.

§ 5. That original sections 11219 and 11221 of the General Statutes of 1915 be and the same are hereby repealed.

§ 6. This act shall take effect and be in force from and after its publication in the official State paper.

Approved March 13, 1917.

Published in official State paper March 26, 1917.

## AMENDMENT OF 1919.

### CHAPTER 305.

Section 1. That section 11203 of the General Statutes of 1915 is hereby amended to read as follows: Sec. 11203. All property, corporeal or incorporeal, and any interest therein, within the jurisdiction of the State, whether belonging to the inhabitants of the State or not, which shall pass by will or by the laws regulating intestate succession, or by deed, grant or gift made in contemplation of death, or made or intended to take effect in possession or enjoyment after the death of the grantor, to any person, absolutely or in trust, except in case of a *bona fide* purchase for full consideration in money or money's worth; and except property to or for the use of literary, educational, scientific, religious, benevolent and charitable societies or institutions: Provided, such use entitle the property so passing to be exempt from taxation; and except property to or for the use of the State, a county or a municipality for public purposes, shall be taxed as herein provided. Distributees of estates, whether they succeed to the ownership of their respective shares by reason of the provisions of a will or under the law of descents and distributions, or by deed, grant or gift made in contemplation of death, shall be classified as follows: Class A shall consist of the surviving husband or wife, the lineal ancestors, lineal descendants, adopted child or children, lineal descendants of any adopted child, the wife or widow of a son, or the husband of a daughter of the decedent. Class B shall consist of the brothers and sisters of the decedent. Class C shall consist of relatives of all degrees of consanguinity, except those included in classes A and B, and shall include also strangers in the blood of the decedent. From the value of the shares, as ascertained under the provisions of this act and succeeded to by the several distributees, exemptions

shall be allowed as follows: To the surviving wife, \$75,000; to each other member of class A, \$15,000; to each member of class B, \$5,000; and the tax herein provided for shall be charged only upon the excess value of the shares over and above the exemption herein declared: Provided, that when one or more of the shares of an estate shall consist of property within and property without the State only such percentage of the exemptions above named shall be allowed as is the percentage within the State of the total value of the shares: And provided further, that any gift, legacy, inheritance, transfer, appointment or interest which shall be valued, for the purposes of this act, after exemptions are allowed, at a less sum than \$200, shall not be subject to the tax hereby imposed.

Upon the value of shares succeeded to by members of class A in excess of the exemptions herein declared, the following rates of tax are hereby imposed: On the first \$25,000, or fraction thereof, 1%; on the second \$25,000, or fraction thereof, 2%; on the next \$50,000, or fraction thereof, 3%; on the next \$100,000, or fraction thereof, 4%; on all over \$500,000, 5%: Provided, that upon the share of the estate passing to the wife, only one-half of the foregoing rates shall be charged. Upon the value of shares succeeded to by members of class B in excess of the exemptions herein declared, the following rates of tax are hereby imposed: On the first \$25,000, or fraction thereof, 3%; on the second \$25,000, or fraction thereof, 5%; on the next \$50,000, or fraction thereof, 7½%; on the next \$400,000, or fraction thereof, 10%; on all over \$500,000, 12½%. Upon the value of shares succeeded to by members of class C, the following rates of taxes are hereby imposed: On the first \$25,000, or fraction thereof, 5%; on the next \$25,000, or fraction thereof, 7½%; on the next \$50,000, or fraction thereof, 10%; on the next \$400,000, or fraction thereof, 12½%; on all over \$500,000, 15%. All taxes herein provided for shall be for the use of the State; and administrators, executors and trustees, and any grantees under any such conveyance made during the grantor's life shall be liable for such taxes, with interest at the legal rate until the same shall have been paid. Property shall be deemed to have been transferred by grant or gift in contemplation of death under this act when such grant or gift shall have been executed within 90 days prior to the death of the grantor or donor.

§ 2. That original section 11203 of the General Statutes of 1915 be and the same is hereby repealed.

§ 3. This act shall take effect and be in force from and after its publication in the official State paper.

## KENTUCKY.

Taxes transfers of stock in domestic corporations held by nonresident decedents.

CLASS OF RELATIONSHIP	Exemptions	Above ex- emption to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	Over \$500,000
		per cent	per cent	per cent	per cent	per cent
Husband, wife, lineal issue, lineal ancestor, adopted child .....	Widow or minor child \$10,000 Others \$5,000	1	1½	2	2½	3
Brother, sister, their de- scendants, daughter- in-law, son-in-law ..	\$2,000	1½	2½	3	3½	4½
Aunt and uncle and their descendants ...	\$1,500	3	4½	5	7½	9
Great aunt or uncle and their descendants	\$1,000	4	6	8	10	12
All others, except pub- lic and charitable corporations .....	\$500	5	7½	10	12½	15

**LAWS OF 1906, CHAPTER 22, AS AMENDED BY CHAPTER 36, LAWS OF 1910, AND CHAPTER 26, LAWS OF 1916. PRIOR TO 1916 KENTUCKY TAXED ONLY COLLATERAL INHERITANCES.**

**Subsection 1. Transfers Subject to Tax.**—All property which shall pass, by will or by the intestate laws of this State, from any person who may die seized or possessed of the same while a resident of this State, or if such decedent was not a resident of this State at the time of death, which property, or any part thereof, shall be within this State, or any interest therein, or income therefrom, which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons or to any body-politic or corporate, in trust or otherwise, or by reason whereof any person or body-politic or corporate shall become beneficially entitled in possession or expectancy, to any property, or to the income thereof, shall be and is subject to a tax for the general use of the Commonwealth, upon the fair cash value of such property in excess of the exemptions hereinafter granted and at the rates hereinafter prescribed.

Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after passage of this act, provided that property or estates which have vested in such persons or corporations before this act takes effect shall not be subject to the tax.

**Subsection 2. Primary Rates of Taxation.**—When the property or any beneficial interest therein passes by any such transfer, where the amount of the property shall exceed in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars the tax hereby imposed shall be:

Where the person entitled to the beneficial interest in any such property shall be one of Class A (i. e. the husband, wife, lineal issue, lineal ancestor of the decedent, any child adopted as such in conformity with the laws of this Commonwealth, any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child) at the rate of 1% of the fair market value of such interest.

Where the person entitled to the beneficial interest shall be one of Class B (i. e. the brother, sister, descendant of a brother or sister, or widow of a son, or the husband of a daughter of the decedent) at the rate of 1½%.

Where the person shall be one of Class C (i. e. the brother or sister of the father or mother, or the descendant of a brother or sister of the father or mother of the decedent) at the rate of 3%.

Where the person is one of Class D (i. e. the brother or sister of the grandfather or grandmother or the descendant of a brother or sister of the grandfather or grandmother of the decedent) at the rate of 4%.

Where the person is one of Class E (i. e. a person related in any other degree of collateral consanguinity than is mentioned in one of the preceding classes, a stranger in blood, or body-politic or corporate) at the rate of 5%.

The foregoing rates are for convenience termed primary rates.

**Subsection 3. Other rates of taxation.**

When the fair cash value of such legacy, distributive share, or interest exceeds \$25,000 the rates of tax upon such excess shall be as follows:

Upon the excess over \$25,000 and up to \$50,000, one and one-half times the primary rates.

Upon the excess over \$50,000 and up to \$100,000, two times the primary rates.

Upon the excess over \$100,000 and up to \$500,000, two and one-half times the primary rates.

Upon the excess over \$500,000, three times the primary rates.

**Subsection 4. Exemptions From Tax.**—The following exemptions are allowed, to be taken out of the first \$25,000:

To the widow of the decedent and to each minor child of the decedent, \$10,000.

To each other person in Class A, \$5,000.

To each person in Class B, \$2,000.

To each person in Class C, \$1,500.

To each person in Class D, \$1,000.

To each person in Class E, \$500.

Property of any amount bequeathed or transferred to any municipal corporation within this State for public purposes, to institutions of purely public charity, to institutions of education not used or employed for gain by any person or corporation and the income of which is devoted solely to the cause of education, to public libraries, or to any person or persons, society, corporation, institution or association in trust for any of the purposes above mentioned, shall be exempt from such tax.

§ 2. When any grant, gift, devise, legacy or succession upon which a tax is imposed by section 1 of this article shall be an estate, income or interest for a term of years or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion of other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, determined in the manner provided in section 11 of this article and the tax prescribed shall be immediately due and payable to the sheriff or collector of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid: Provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons or body politic or corporate, shall execute a bond to the Commonwealth of Kentucky, in a sum of twice the amount of the tax arising upon personal estate, with such sureties as the county court may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county: Provided, further, that such person shall make a full and verified return of such property to said court, and file the same in the office of the county clerk within one year of the death of the decedent, and within that period enter into such surety and renew the same every five years.

§ 3. Taxes bequests to executors in lieu of commissions at all in excess of reasonable value of services.

§ 4. Provides that all taxes are due at death. No interest for eighteen months, after that 10%. If paid within nine months, discount of 5%. If not paid within eighteen months, executor or administrator is required to give a bond.

§ 5. In case of necessary litigation or unavoidable delay interest may be reduced to 6%.

§ 6. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the fair cash value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money, he shall make application to the county court to make an apportionment if the



case require it, of the sum to be paid into his hands by such legatees, and for such further orders relative thereto as the case may require.

§ 7. Gives power of sale of real estate to pay tax as in case of debts.

§ 8. Provides for tax receipts which must be produced by executor or administrator to secure final accounting.

§ 9. Provides for proportionate refund of tax where debts have been proved after distribution.

§ 10. Requires foreign executors to pay tax before assigning or transferring stock or loans within the State, makes the corporation permitting it without payment of the tax liable.

§ 11. Provides for appraisal at fair market value and computation of life estates and remainders on mortality tables at 5% basis.

§ 12. Makes it a misdemeanor for an appraiser to accept any fee or reward.

§ 13. Gives the county court of the residence of decedent or situs of the property jurisdiction in transfer tax proceedings.

§§ 14-18. Provide for the collection of delinquent taxes.

§ 19. Repeals former statutes.

**Prior Statute:** L. 1906, ch. 22.

## LOUISIANA.

The courts having held that the act of 1912 did not apply to nonresident property, the statute was amended in 1918 so as to impose the tax upon all property of nonresident decedents within the State, which includes stock of domestic corporations.

TABLE OF RATES AND EXEMPTIONS.

Class or Relationship.	Exemption.	Rate of Tax.
Ascendants or descendants. Surviving wife or husband. (Held to include adopted child.)	If under \$10,000 no tax.	If over \$10,000 2% on all.
Collaterals and strangers, except religious, charitable and educational institutions and property which has borne its just proportion of taxation.	None.	5% on all.

## THE STATUTE.

### LAWS OF 1906, CHAPTER 109, AS AMENDED BY CHAPTER 42, LAWS 1912; CHAPTER 301, LAWS 1914, AND CHAPTER 51, LAWS 1918.

Section 1. Prescribes above rates on all "inheritances, legacies and other donations *mortis causa*," and provides:

"That the said tax shall not be imposed in the following cases:

"(a) On any inheritance legacy or other donation *mortis causa* to or in favor of any ascendant or descendant or surviving wife or husband of the decedent below \$10,000 in amount or value.

"(b) On any legacy or other donation *mortis causa* to or in favor of any educational, religious or charitable institution.

"(c) When the property inherited, bequeathed or donated shall have borne its just proportion of taxes prior to the time of such bequest, donation or inheritance.

"But said tax shall be imposed on all property physically in the State of Louisiana, whether owned by a resident or nonresident, and whether inherited under the law of this State or of any other State or country, and said tax shall be imposed on all personal property owned by residents of the State of Louisiana wherever situate; unless in any and all such cases such property shall be included in the exemptions set forth in paragraphs (a), (b) and (c), as amended by chapter 51, L. 1918."

§ 2. Makes it unlawful for beneficiary to be in, or take possession without court order. In case he does he may not renounce and remain personally liable if he disposes of the property.

§ 3. Requires executor or administrator after paying debts to proceed before the court having jurisdiction of the probate to have the tax fixed.

§ 5. Requires the executor or administrator to pay the tax out of funds in his hands if sufficient, if not to collect from beneficiary or apply to the court for sale of the property.

§ 6. Forbids delivery to beneficiary until tax has been fixed and paid, otherwise executor or administrator and bond personally liable. May not have discharge until tax paid or decree that none is due.

§ 7. Requires personal representatives to file inventory.

§ 8. Requires the heir to pay tax on legacy charged on real estate.

§ 9. Or must sell it to pay the tax.

§ 10. Forbids delivery of legacy until tax is paid. If delivered by heir he is personally liable.

§ 11. The tax collector within six months may bring proceedings and have a search for will.

§ 12. Should the will be found the tax collector may have it proved.

§ 13. If no will is found the tax collector must bring proceedings to fix the tax.

§ 14. Permits similar proceedings by beneficiary.

§ 15. Preserves the rights of creditors of deceased.

§ 16. Forbids entry or sale by heir or legatee until tax is paid.

§ 17. Be it further enacted, etc., "No bank, banker, trust company, warehouseman, or other depository and no person or corporation or partnership having on deposit or in possession or control any moneys, credits, goods or other things or interest rights of value for a person deceased, or in which he had any interest, and no corporation the stock or registered bonds of which are owned by a person deceased shall deliver or transfer such moneys, credits, stock, bonds or other things or rights of value to any heir or legatee of such deceased person, unless the tax due thereon under this act shall have been paid, or unless it be judicially determined in the manner herein prescribed that no tax is due by such heir or legatee. Otherwise the person or corporation so making delivery or transfer shall be liable for the said tax, but the order of a court of competent jurisdiction, directing such delivery or transfer, shall be full authority for the same."

This section was amended by chapter 51, L. 1918, to require three days' notice to the Comptroller before the executor or administrator can secure access to the safe deposit box of the deceased.

18. "The burden of proving facts establishing exemption from the tax imposed by this act is upon the person claiming exemption."

Chapter 51, L. 1918, adds the following to this section:

"All donations or transfers of property for inadequate consideration within ninety days prior to the death of the owner thereof shall be presumed to have been made in avoidance of the tax herein levied and, unless such presumption shall be overcome by sufficient evidence, such property shall be deemed a part of the succession of the person who has so donated or alienated said property for purposes of computing the inheritance tax due by the succession, legatees or heirs of such person."

§ 19. Gives jurisdiction to the district court of the last domicile of decedent or where the property of a nonresident is located.

§ 20. Provides for representation of unknown heirs and nonresidents.

§ 21. Fixes the fees of tax collectors.

§ 22. Provides for the appointment of attorneys to collect the tax.

§ 23. Be it further enacted, etc., In fixing the value of any legacy or donation *mortis causa* which consists in whole or in part of an annuity or usufruct or right of use or habitation, the court shall consider the expectancy of life of the legatee or donee according to the table known as the American experience table of mortality, at 6% per annum compound interest.

§ 24. Be it further enacted, etc., The taxes hereby levied shall bear interest

at the rate of 2% per month, beginning six months after the death of the decedent; saving to any heir, legatee or donee the right to stop the running of interest against him by paying the amount of his tax with accrued interest, or by tendering the same to the tax collector in the manner prescribed by the general law; provided, however, that in cases in which the settlement of the succession is not unduly delayed, or in which the right of any party to receive an inheritance or legacy is contested, and in all cases in which the failure to pay tax on any legacy or inheritance within the period aforesaid is not imputable to the laches of the heir or legatee, the court may, in its discretion, remit such interest.

§ 25. Be it further enacted, etc., The costs of all proceedings under this act shall be borne by the mass of the succession; provided, that in cases in which it seems to him equitable to do so the judge shall have power to apportion the costs among the several parties, or allow any party to retain his costs out of any sum found to be due by him for tax hereunder. Provided, the provisions of this act shall affect all successions not finally closed, or in which the final account has not been filed.

**Prior Statutes:** There have been collateral inheritance taxes since 1828. Those of recent years are L. 1888, ch. 109; L. 1894, ch. 130; L. 1904, ch. 45.

## MAINE.

Taxed property of nonresidents only where State of domicile also taxed such property, until April 7, 1917, when reciprocal provision was repealed. All property of nonresidents within the State now taxed, including stock in domestic corporations.

TABLE OF RATES

RELATIONSHIP	Exemption	Rates of tax above exemption up to \$50,000	\$50,000 to \$100,000	In excess of \$100,000
Father, mother, son, daughter, husband, wife, adopted child or adoptive parent.	\$10,000	1%	1½%	2%
Grandparents and other lineal ancestors of remoter degrees, grandchildren and other lineal descendants of remoter degrees, wife or widow or son, or husband or widower of daughter.	500	1%	1½%	2%
Brother, sister, uncle, aunt, nephew, niece, or cousin.	500	4%	4½%	5%
All other heirs or legatees except educational, domestic, charitable, benevolent or religious institutions.	500	5%	6%	7%

### CHAPTER 8, REVISED STATUTES, 1903, AS AMENDED BY LAWS OF 1905, CHAPTER 124; LAWS OF 1909, CHAPTERS 186 AND 187; LAWS OF 1911, CHAPTER 163; LAWS OF 1913, CHAPTERS 128 AND 190; LAWS OF 1917, CHAPTER 266.

§ 69. All property within the jurisdiction of this State, and any interest therein, whether belonging to inhabitants of this State or not, and whether tangible or intangible, which shall pass by will, by the intestate laws of this State, by allowance of a judge of probate to a widow or child by deed, grant, sale or gift, except in cases of a *bona fide* purchase for full consideration in money or money's worth, and except as herein otherwise provided, made or intended to take effect in possession or enjoyment after the death of the

grantor, to any person in trust or otherwise except to or for the use of any educational, charitable, religious or benevolent institution in this State, the property of which is by law exempt from taxation, shall be subject to an inheritance tax for the use of the State as hereinafter provided.

Rates and exemptions are then prescribed as shown in the above table.

The section concludes: Administrators, executors and trustees, and any grantees under such conveyances made during the grantor's life shall be liable for such taxes, with interest, until the same have been paid. [As amended by chap. 266, L. 1917, repealing reciprocal provisions.]

§ 70. Whenever property shall descend by devise, descent, bequest or grant to a person for life or for a term of years and the remainder to another, except to or for the use of any educational, charitable, religious or benevolent institution in this State, the value of the prior estate shall be determined by the Actuaries' Combined Experience Table at 4% compound interest and a tax imposed at the rate prescribed in the preceding section for the class to which the devisee, legatee or grantee of such estate belongs and a tax shall be imposed at the same time upon the remaining value of such property at the rate prescribed in said section for the class to which the devisee, legatee or grantee of such remainder belongs, subject to the exemptions provided in the preceding section.

In every case in which it is impossible to compute the present value of any interest by reason of such interest being conditioned upon the happening of a contingency or dependent upon the exercise of a discretion or subject to a power of appointment or otherwise, the Attorney-General may effect such settlement of the tax as he shall deem for the best interests of the State and payment of the sum so agreed upon shall be a full satisfaction of such tax.

§ 71. Taxes excess over reasonable compensation of bequest to executors in lieu of commissions.

§ 72. Makes taxes due at two years after death, but if legacy paid before tax must be paid at same time. After two years interest at 6% is charged. At the time of payment certificate of Probate Court showing amount due must be presented to State Treasurer. Within two years the personal representatives of the deceased must petition the Probate Court to assess the tax. If not so done the Attorney-General may petition. In either case he may appear in tax proceedings. The tax is a lien on real estate which may be satisfied by payment or filing a bond.

§ 73. Makes executors and administrators personally liable for tax and their bondsmen and an action of debt may be maintained against them for the tax.

§ 74. Prohibits delivery of property to legatee until the tax is paid.

§ 75. Where legacy is a charge on real estate the heir must deduct tax before paying legacy and the tax remains a lien until paid.

§ 76. Legacy in money tax to be deducted but if not in money court makes an apportionment.

§ 77. Gives power of sale to pay tax in same manner as to pay debts.

§ 78. Requires production of tax receipt before final settlement allowed.

§ 79. Provides for filing copy of inventory with Attorney-General.

§ 80. Requires executors and administrators to inform board of assessors when real estate passes subject to the tax.

§ 81. Provides for appointment of appraisers of probate judge and valuation by them of estate at fair market value on due notice to all parties in interest.

§ 82. Gives the probate court having jurisdiction of estate the jurisdiction in transfer tax proceedings and gives the same right of appeal as in other cases.

§ 84. Fixes the fees on judges and registers of probate.

§ 85. Defines "person" as including corporations and "property" as including both real and personal property.

§§ 86, 87 and 88 makes provisions for the enforcement of delinquent taxes.

§ 89. Where a nonresident decedent has more than one heir or his property is divided among more than one legatee, each heir, or in the case of a will, each legatee shall be held to receive such proportion of the property within

the jurisdiction of this State as the amount of all property received by him as such heir or legatee bears to all property of which said decedent died possessed. The amount of property of the estate of a nonresident which shall be exempt from the payment of the inheritance tax under section 1 shall be only such proportion of the whole exempted amount which is provided therein for the estates of resident decedents as the amount of the estate of the nonresident actually or constructively in his State bears to the total value of the nonresident decedent's estate wherever situated. [As amended by chap. 266, L. 1917.]

§ 90. Provides for reports by town and city clerk to the State Treasurer of persons dying whose estate might be subject to tax.

§ 91. When the personal estate passing from any person, not an inhabitant or resident of this State, as provided in section sixty-nine of chapter eight of the revised statutes, shall consist in whole or in part of shares of any railroad, or street railway company or telegraph or telephone company incorporated under the laws of this State and also of some other state or country, so much only of each share as is proportional to the part of such company's lines lying within this State shall be considered as property of such person within the jurisdiction of this State for the purposes of this chapter.

§ 92. Made reciprocal provisions concerning the property of nonresidents and was repealed by chap. 266, L. 1917.

§ 93. Subject to the provisions of section ninety-two if a foreign executor, administrator or trustee assigns or transfers any stock in any national bank located in this State or in any corporation organized under the laws of this State, owned by a deceased nonresident at the date of his death and liable to a tax under the provisions of this chapter, the tax shall be paid to the Attorney-General at the time of such assignment or transfer; and if it is not paid when due such executor, administrator or trustee shall be personally liable therefor until it is paid. Subject to the provisions of section ninety-two a bank located in this State or a corporation organized under the laws of this State which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee before all taxes imposed thereon by the provisions of this chapter have been paid, shall be liable for such tax in an action of debt brought by the Attorney-General.

§ 94. Subject to the provisions of section ninety-two no person or corporation shall deliver or transfer any securities or assets belonging to the estate of a nonresident decedent to anyone unless authority to receive the same shall have been given by a probate court of this State, and upon satisfactory evidence that all inheritance taxes provided for by this chapter have been paid, guaranteed or secured as hereinbefore provided. Any person or corporation that delivers or transfers any securities or assets in violation of the provisions of this section shall be liable for such tax in an action of debt brought by the Attorney-General.

§ 95. Provides for proceedings by Attorney-General to collect tax.

§ 96. Provides that the statute shall not be retroactive.

§ 97. Requires the Attorney-General to pay tax collected to the State Treasurer.

**Prior Statutes:** L. 1893, ch. 146; L. 1895, ch. 96; L. 1901, ch. 225; L. 1903, ch. 156. The last being the present act.

**Amendments:** L. 1905, ch. 124; L. 1909, ch. 186 and 187; L. 1911, ch. 163; L. 1913, ch. 128; L. 1917, ch. 266.

## MARYLAND.

Taxes collaterals and strangers only.

Taxes personal property within the State of nonresident collaterals and strangers.

Does not tax transfers of nonresident stock in domestic corporations except as to the commissions of executors and administrators thereon.

TABLE OF RATES

CLASS OR RELATIONSHIP	Exemption	Rates
Father, mother, husband, wife, children and lineal descendants.....	All.....	No tax
All others.....	\$500	If over \$500 5% on all

**PUBLIC GENERAL LAWS OF MARYLAND, 1904, ARTICLE 81, SECTION 117, AS AMENDED BY LAWS 1908, CHAPTER 695.**

Section 117. All estates, real, personal and mixed, money, public and private securities for money of every kind passing from any person who may die seized and possessed thereof, being in this State, or any part of such estate or estates, money or securities, or interest therein, transferred by deed, will, grant, bargain, gift or sale, made or intended to take effect in possession after the death of the grantor, bargainor, deviser or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, children and lineal descendants of the grantor, bargainor or testator, donor or intestate, shall be subject to a tax of five per centum in every hundred dollars of the clear value of such estates, money or securities; and all executors and administrators shall only be discharged from liability, for the amount of such tax, the payment of which they be charged with, by paying the same for the use in this State, as herein-after directed; provided, that no estate which may be valued at a less sum than five hundred dollars shall be subject to the tax imposed by this section.

§ 118. Requires executors and administrators to pay the tax.

§ 119. Gives them power of sale.

§ 120. Tax must be paid within thirteen months or executor or administrator forfeits his commissions.

§ 121. The same persons who appraise the personal property must also value the real estate.

§ 122. Prescribes oath of appraisers.

§ 123. Where property is in two counties permits appointment of additional appraiser.

§§ 124 to 129. Prescribe duties of appraisers, make the tax a lien on real estate for four years and provide for its sale if necessary to pay the tax.

§ 130. Whenever any estate, real, personal or mixed, of a decedent shall be subject to the tax mentioned in the thirteen preceding sections, and there be a life estate or interest for a term of years, or a contingent interest, given to one party and the remainder or reversionary interest, to another party, the orphans' court of the county or city in which administration is granted shall determine in its discretion and at such time as it shall think proper what proportion the party entitled to said life estate, or interest for a term of years, or contingent interest, shall pay of said tax, and the judgment of said court shall be final and conclusive, and the party entitled to said life estate or interest for a term of years, or other contingent interest, shall within thirty days after the date of such determination pay to the register of wills his proportion of said tax; and thereafter the said court shall from time to time after the determination of the preceding estate and as the remainder of said estate shall vest in the party or parties entitled in remainder or reversion determine in its discretion what proportion of the residue of said tax shall be paid by the party or parties in whom the estate shall so vest; and the judgment of the said court shall be final and each of the parties successively entitled in remainder or reversion shall pay his proportion of said tax to the register of wills within thirty days after the date of such determination as to him; and the proportion of the tax so determined to be paid by the party entitled to the life interest or estate shall be and remain a lien upon such interest or

estate for the period of four years after the date of the death of the decedent, who shall have died seized and possessed of the property; and the proportion of the tax so determined to be paid by the persons respectively entitled to the remainder, or reversionary interest, shall be a lien on such interest for the period of four years from the date of which such interest shall vest in possession.

§ 131. Whenever an interest in any estate, real, personal or mixed, less than an absolute interest, shall be devised or bequeathed to or for the use and benefit of any person or object not exempted from the tax under section 117, then only such interest so devised or bequeathed shall be liable for said tax; and it shall be the duty of the orphans' court of the county or city in which administration is granted, or any other court assuming jurisdiction over such administration, to determine as soon after administration is granted as possible, on application of such person or object, the value of such interest liable for said tax, by deducting from the whole value of the estate so much thereof as shall be the value of the interest therein, of any person who under said section 117, is exempt from said tax, and the residue thereof shall be the value of said interest upon which said tax is payable; and said tax so ascertained shall be paid by such person or object within ninety days from such ascertainment, with interest thereon at 6% per annum, after the expiration of twelve (12) months from the date of the death of the decedent, under whose will or by whose intestacy said interest is acquired, if said tax has not sooner been paid, or within ninety days from the time that it shall be ascertained that such person or object shall be entitled to any such interest in any estate; but such tax shall bear interest at the rate of 6% per annum from the expiration of twelve (12) months from said death; but if such person or object shall fail to pay said tax, as above provided, then such person or object shall at the time when he, she or it comes into possession of such estate, pay a tax as provided for in said section 117, on the whole value thereof.

§ 132. Provides for sale of property within thirty days after decree if tax is not paid.

§ 133. Makes bond of executors and administrators liable for tax.

§ 134. Provides that letters of delinquent executor or administrator may be revoked and his bondsmen held liable.

§§ 136 to 141. Provide for the collection of delinquent taxes, reports, receipts and fees.

**Prior Statutes:** Maryland has taxed collateral inheritance since 1844. Those prior to 1904 for the last twenty years are as follows: L. 1890, ch. 249; L. 1892, ch. 473 and 564; L. 1894, ch. 493.

## TRANSFERS OF STOCK IN MARYLAND CORPORATIONS.

The Attorney-General of Maryland has courteously furnished the following codification of the law of that State as to the transfer of stock of nonresident decedents in Maryland corporations:

### ANNOTATED CODE OF MARYLAND (BAGBY'S EDITION), VOL. 11 (1912), ARTICLE 93.

§ 77. If any person being a resident of any other state, district or territory of the United States, or of any foreign country, shall die possessed of or entitled to any of the public stocks or debts created or issued upon the credit of this State, or of the stock or debt created or issued upon the credit of the City of Baltimore, or of the capital stock of any joint stock company incorporated by the authority of this State, or of any national bank in this State, his right or title thereto shall devolve on his executor or administrator, duly constituted and appointed as such by the law of the state, district, territory or country wherein he may have resided at the time of his death, in the same manner as if the said executor or administrator had been duly constituted and appointed as such by the proper authority in this State.

§ 78. Nothing contained in the preceding section shall deprive the courts of this State of their authority to grant administration on the estate of such

deceased person, and the right of a person so appointed shall be preferred to the right of the foreign executor or administrator; provided, notice of the claim of the domestic executor or administrator to such stock be given to the proper officer having charge of the stock book wherein such stock is entered, and having authority to make or allow a transfer thereof before any sale or transfer thereof has actually been made by the foreign executor or administrator; and provided further, that administration shall not be granted to any one in this State, except the next of kin, residuary legatee, or a creditor who shall make oath to and exhibit the vouchers of his claim before obtaining administration.

§ 79. No such foreign executor or administrator shall be authorized to transfer any such stock until after he shall have given at least one month's notice by advertisement once a week for four weeks in one daily newspaper of the City of Baltimore, stating therein the death of his testator or intestate and the amount and description of stock intended to be transferred.

**Note:** This section is as amended by the act of 1912, ch. 148, and is codified in Vol. III (1914) of the Code.

§ 80. The provisions of this code imposing a tax on commissions of domestic executors and administrators shall extend to such foreign executors or administrators; and the Orphans' Court of the county or city in which the stock transferred is situated shall fix the commissions of such foreign executor or administrator, who shall thereupon pay the tax thereon to the register of such county or city. Any officer of the State of Maryland or of the City of Baltimore, and any corporation incorporated under the laws of this State, and any national bank in this State, who or which transfers or permits to be transferred any stocks or debts by foreign executors or administrators in violation of the provisions of this Article shall be subject to a penalty of not less than \$50.00, to be recovered by the State for its own use.

**Note:** This section is as amended by the act of 1918, ch. 31, effective June 1, 1918, and is codified in Vol. IV (1918) of the Code.

**Note:** Neither the Attorney-General nor any State officer has anything to do in connection with the requirements of the above statutes. The duty of complying with them is entirely the duty of the nonresident executor or administrator, for whose information and convenience the following outline of the procedure is given.

The form of advertisement usually followed is:

#### Transfer of Stock.

Notice is hereby given that the undersigned, in conformity with Art. 93, Sections 77-80 of the Annotated Code of Maryland, will, at the expiration of one month from date, transfer ..... shares of the Capital stock of the ..... Company, a corporation of the State of Maryland, now standing on the books thereof in the name of ....., who is deceased, late of ..... City.

.....  
Executors-Administrators.

After the expiration of the above notice, a copy of it, with publisher's certificate attached, must be filed with the Orphans' Court of Baltimore City, and that court must then allow the foreign executor or administrator commissions upon the market value of the stock to be transferred, out of which the executor or administrator must pay the Maryland State tax upon such commissions. This tax is 1% on the first \$20,000 of value of the stock to be transferred, and one-fifth of 1% upon the balance. This tax is due whether the executor or administrator waives his commissions or not, and commissions must always be allowed at least equal to the amount of the tax. (Act, 1916, chap. 559.)

The Orphans' Court will then pass an order directing the stock to be transferred, and the Maryland corporation will transfer the stock upon the delivery of the endorsed certificate, with duly certified copy of the order of court attached.



## MASSACHUSETTS.

No tax on nonresidents except as to real property within the State.

TABLE OF RATES

Rate of Succession Tax under Acts of 1912, Chapter 678. In Effect upon the Estates of Persons Dying on or after May 29, 1912

Class or Relationship	Ex-emption	Rate of tax					
	\$1,000 or under	Over \$1,000 but not over \$10,000	Over \$10,000 but not over \$25,000	Over \$25,000 but not over \$50,000	Over \$50,000 but not over \$250,000	Over \$250,000 but not over \$1,000,000	Over \$1,000,000
1. Charitable, educational or religious societies or institutions exempt from local taxation; trusts for charitable purposes to be carried out within Massachusetts; city or town in Massachusetts for public purposes.	No tax	No tax	No tax	No tax	No tax	No tax	No tax
2. Class A. Husband, wife, father, mother, child, adopted child, adoptive parent.	No tax	No tax	1%	1%	2%	3%	4%
3. Class A. Lineal ancestor, except father or mother; lineal descendant, except child; lineal descendant of adopted child; lineal ancestor of adoptive parent; wife or widow of a son; husband of a daughter.	No tax	1%	1%	1%	2%	3%	4%
4. Class B. Brother, sister, half brother, half sister, nephew, niece.	No tax	2%	3%	5%	6%	7%	8%
5. All others (including step-children).	No tax	5%	5%	5%	6%	7%	8%

In no event is the tax to reduce the share below the exempted amount.

## RATES PRIOR TO MAY 29, 1912

RATE OF SUCCESSION TAX UNDER ACTS OF 1907, CHAPTER 563, AS CODIFIED AND AMENDED BY ACTS OF 1909, CHAPTER 490, PART IV., AND ACTS OF 1909, CHAPTERS 268 AND 527. IN EFFECT UPON THE ESTATES OF PERSONS DYING ON OR AFTER SEPT. 1, 1907, AND PRIOR TO MAY 29, 1912.

CLASS OR RELATIONSHIP	Exemption	Rate of tax				
	\$1,000 or under	Over \$1,000 but not over \$10,000	Over \$10,000 but not over \$25,000	Over \$25,000 but not over \$50,000	Over \$50,000 but not over \$100,000	Over \$100,000
1. Charitable, educational or religious societies or institutions exempt from local taxation; trusts for charitable purposes to be carried out within Massachusetts; city or town in Massachusetts for public purposes.	No tax	No tax	No tax	No tax	No tax	No tax
2. Class A. Husband, wife, father, mother, child, adopted child, adoptive parent.	No tax	No tax	1%	1%	1½%	2%
3. Class A. Lineal ancestor, except father or mother; lineal descendant, except child; lineal descendant of adopted child; lineal ancestor of adoptive parent; wife or widow of a son; husband of a daughter.	No tax	1%	1%	1%	1½%	2%
4. Class B. Brother, sister, half brother, half sister, nephew, niece.	No tax	3%	3%	4%	4%	5%
5. All others (including step-children)	No tax	5%	5%	5%	5%	5%

In no event is the tax to reduce the share below the exempted amount.

\* RATE OF SUCCESSION TAX UNDER ACTS OF 1916, CHAPTER 268. IN EFFECT UPON THE ESTATES OF PERSONS DYING ON OR AFTER MAY 26, 1916.

Beneficiary	Value of Share						
	\$1,000 or under	Over \$1,000 but not over \$10,000	Over \$10,000 but not over \$25,000	Over \$25,000 but not over \$50,000	Over \$50,000 but not over \$250,000	Over \$250,000 but not over \$1,000,000	Over \$1,000,000
Charitable, educational or religious societies or institutions exempt from local taxation; trusts for charitable purposes to be carried out within Massachusetts; city or town in Massachusetts for public purposes.	No tax	No tax	No tax	No tax	No tax	No tax	No tax
Class A. Husband, wife, father, mother, child, adopted child, adoptive parent.	No tax	No tax	1%	2% on excess	4% on excess	5% on excess	6% on excess
Grandchild.	No tax	1%	1%	2% on excess	4% on excess	5% on excess	6% on excess

\* Note.— Additional tax of 25% imposed on estates of persons dying between May 3, 1916, and May 3, 1919. See page 905.

Beneficiary	Value of Share						
	\$1,000 or under	Over \$1,000 but not over \$10,000	Over \$10,000 but not over \$25,000	Over \$25,000 but not over \$50,000	Over \$50,000 but not over \$250,000	Over \$250,000 but not over \$1,000,000	Over \$1,000,000
Class B. Lineal ancestor, except father or mother; lineal descendant, except child or grandchild; lineal descendant of adopted child; lineal ancestor of adoptive parent; wife or widow of a son; husband of a daughter.	No tax	1%	2% on excess	4% on excess	5% on excess	6% on excess	7% on excess
Class C. Brother, sister, half-brother half-sister, nephew, niece, step-child or step-parent.	No tax	3%	5% on excess	7% on excess	8% on excess	9% on excess	10% on excess
Class D. All others.	No tax	5%	6% on excess	7% on excess	8% on excess	9% on excess	10% on excess

As to discount, see amendment by Ch. 14, L. 1918, p. 905.

No tax is payable on account of the interest of any beneficiary who does not take in excess of \$1,000.

No tax is payable on account of property passing to the husband, wife, father, mother, child or adopted child of deceased unless his or her *total beneficial interest* exceeds \$10,000.

If the value of all property passing to any one of such beneficiaries exceeds \$10,000, the tax attaches to the whole amount.

In no event is the tax to reduce the share below the excepted amount.

### THE STATUTE.

### LAWS OF 1909, CHAPTER 490, AS AMENDED BY LAWS 1912, CHAPTER 678, AND OTHER STATUTES TO JAN. 1, 1916.

Section 1. All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, belonging to inhabitants of the commonwealth, and all real estate within the commonwealth, or any interest therein, belonging to persons who are not inhabitants of the commonwealth, which shall pass by will, or by the laws regulating intestate succession, or by deed, grant or gift, except in cases of a *bona fide* purchase for full consideration in money or money's worth, made or intended to take effect in possession or enjoyment after the death of the grantor, to any person, absolutely or in trust.

Then follow the rates and exemptions as shown in the foregoing table for 1912. The section concludes: All taxes under this act shall be paid out of and chargeable to capital and not income, unless otherwise provided in a will or codicil, or deed or other instrument creating the grant or gift, but nothing herein contained shall affect any right of the commonwealth to collect such tax or lien therefor.

Powers of appointment:

Chapter 527, L. 1909, provides:

§ 8. Whenever any person shall exercise a power of appointment derived from any disposition of property made prior to September first, nineteen hundred and seven, such appointment when made shall be deemed to be a disposition of property by the person exercising such power, taxable under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, and of all acts in amendment thereof and in addition thereto, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by the donee by will; and whenever any person

possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a disposition of property taxable under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven and all acts in amendment thereof and in addition thereto shall be deemed to take place to the extent of such omission or failure in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related and succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

§ 2, chap. 490, L. 1919, applies to nonresidents and is repealed.

§ 3. (As amended L. 1912, chap. 678.) Property of a resident of the commonwealth which is not therein at the time of his death shall not be taxable under the provisions of this part if legally subject in another state or country to a tax of like character and amount to that hereby imposed, and if such tax be actually paid or guaranteed or secured in accordance with law in such other state or country; if legally subject in another state or country to a tax of like character but of less amount than that hereby imposed and such tax be actually paid or guaranteed or secured as aforesaid, such property shall be taxable under this part to the extent of the difference between the tax thus actually paid, guaranteed or secured, and the amount for which such property would otherwise be liable hereunder.

§ 4. (As amended L. 1915, chap. 152.) Except as hereinafter provided, taxes imposed by the provisions of this act shall be payable to the treasurer and receiver general by the executors, administrators or trustees at the expiration of one year after the date of giving bond by the executors, administrators or trustees first appointed. If the probate court, acting under the provisions of section thirteen of chapter one hundred and forty-one of the Revised Laws, has ordered the executor or administrator to retain funds to satisfy a claim of a creditor, the payment of the tax may be suspended by the court to await the disposition of such claim. In all cases where there shall be a grant, devise, descent, or bequest to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, the taxes thereon shall be payable by the executors, administrators or trustees in office when such right of possession accrues, or, if there is no such executor, administrator or trustee, by the person or persons so entitled thereto, at the expiration of one year after the date when the right of possession accrues to the person or persons so entitled. If the taxes are not paid when due, interest shall be charged and collected from the time the same became payable. Property of which a decedent dies seized or possessed, subject to taxes as aforesaid, in whatever form of investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not affect any personal property after the same has been sold or disposed of for value by the executors, administrators or trustees. The lien charged by this act upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel, or by an order or decree of the probate court discharging said lien and securing the payment to the commonwealth of the tax due or to become due by bond or deposit as hereinafter provided, or by transferring such lien to other real estate owned by the owner or owners of said real estate or separate parcel thereof.

§ 5. In every case where there shall be a bequest or grant of personal estate made or intended to take effect in possession or enjoyment after the death of the grantor, to take effect in possession or come into actual enjoyment after the expiration of one or more life estates, or a term of years, whether conditioned upon the happening of a contingency or dependent upon the exercise of a discretion, or subject to a power of appointment or otherwise, the executor or administrator or grantee may deposit with the treasurer and receiver general a sum of money sufficient in the opinion of the tax commissioner to pay all taxes which may become due upon such bequest or grant, and

the person or persons having the right to the use or income of such personal estate shall be entitled to receive from the commonwealth interest at the rate of  $2\frac{1}{2}\%$  per annum upon such deposit, and when said tax shall become due the treasurer and receiver general shall repay to the persons entitled thereto the difference between the tax certified and the amount deposited; or any executor, administrator, trustee or grantee, or any person interested in such bequest or grant may give bond to a judge of the probate court having jurisdiction of the estate of the decedent, in such amount and with such sureties as said court may approve, with the condition that the obligor shall notify the tax commissioner when said tax becomes due and shall then pay the same to the treasurer and receiver general.

§ 6. Except as hereinafter provided, said tax shall be assessed upon the actual value of the property at the time of the death of the decedent. In every case where there shall be a devise, descent, bequest or grant to take effect in possession or enjoyment after the expiration of one or more life estates or a term of years, the tax shall be assessed on the actual value of the property or the interest of the beneficiary therein at the time when he becomes entitled to the same in possession or enjoyment. The value of an annuity or a life interest in any such property, or any interest therein less than an absolute interest, shall be determined by the "American Experience Tables" at 4% compound interest.

§ 7. Provides for the immediate payment of future tax claims by beneficiary at his election. Where they are uncertain the Tax Commissioner may compromise with the consent of the Attorney-General.

§ 8. Makes bequest to executors in lieu of commissions taxable in excess or reasonable compensation.

§ 9. Requires the executor or administrator to deduct the tax, collect it from the legatee or from the heir where it is a charge on real estate.

§ 10. Where the legacy is charged on real estate the heir is required to deduct the tax before paying the legacy and the tax is made a lien on the real estate.

§ 11. Where the will provides for payment of tax on legacy from another fund no tax imposed on money so provided.

§ 12. Executors or administrators may be authorized to sell real estate to pay the tax in the same way as in case of debts.

§ 13. Requires the executor or administrator to file a verified inventory and appraisal with the probate court by the Tax Commissioner within three months of appointment under penalty of \$1,000 fine.

§ 14. Requires the register of probate to furnish the Tax Commissioner with copies of the inventory, will and all other papers.

§§ 15 and 16 repealed by chap. 678, L. 1912.

§ 17. Requires notice of any petition to be served on the Tax Commission.

§ 18. Provides refund of taxes erroneously paid.

§ 19. The value of the property upon which the tax is computed shall be determined by the Tax Commissioner and notified by him to the person or persons by whom the tax is payable, and such determination shall be final unless the value so determined shall be reduced by proceedings as herein provided. At any time within three months after such determination the probate court shall, upon the application of any party interested in the succession, or of the executor, administrator or trustee, appoint one disinterested appraiser or three disinterested appraisers, who, first being sworn, shall appraise such property at its actual market value, as of the day of the death of the decedent and shall make return thereof to said court. Such return, when accepted by said court, shall be final; *provided*, that any party aggrieved by such appraisal shall have an appeal upon matters of law. One half of the fees of said appraisers, as determined by the judge of said court, shall be paid by the Treasurer and Receiver General, and one half of said fees shall be paid by the other party or parties to said proceeding.

§ 20. The Tax Commissioner shall determine the amount of tax due and payable upon any estate or upon any part thereof, and shall certify the amount so due and payable to the Treasurer and Receiver General and to the

person or persons by whom the tax is payable; but in the determination of the amount of any tax said Tax Commissioner shall not be required to consider any payments on account of debts or expenses of administration which have not been allowed by the probate court having jurisdiction of said estate. Payment of the amount so certified shall be a discharge of the tax. An executor, administrator, trustee or grantee who is aggrieved by any determination of the Tax Commissioner may, within one year after the payment of any tax to the Treasurer and Receiver General, apply by a petition in equity to the probate court having jurisdiction of the estate of the decedent for the abatement of said tax or any part thereof, and if the court adjudges that said tax or any part thereof was wrongly exacted it shall order an abatement of such portion of said tax as was assessed without authority of law. Upon a final decision ordering an abatement of any portion of said tax, the Treasurer and Receiver General shall pay the amount adjudged to have been illegally exacted, with interest, without any further act or resolve making appropriation therefor.

§ 21. Provides that the probate court having jurisdiction of the estate shall hear and determine all questions arising under the transfer tax statute with the usual rights of appeal.

§ 22. Gives the Tax Commissioner the right to move for administration if no probate proceedings are commenced within four months after death.

§ 23. Requires executor or administrator to show that tax has been paid or adjusted before final accounting allowed.

§ 24. Provides for the collection of unpaid taxes by the Treasurer and Receiver General.

§ 25. Provides that the law applies only to subsequent transfers.

§ 26. Concerns the construction of repealing acts.

§ 27. Is a saving clause as to other legislation.

### ACT OF 1916.

#### GENERAL ACTS OF 1916, CHAPTER 268.

**An Act relative to the Taxation of Legacies and Successions.**

*Be it enacted, etc., as follows:*

SECTION 1. Section one of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, as amended by chapter two hundred and sixty-eight of the acts of the year nineteen hundred and nine, codified as section one of Part IV of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and further amended by section one of chapter five hundred and twenty-seven of the acts of the year nineteen hundred and nine, and by chapter six hundred and seventy-eight of the acts of the year nineteen hundred and twelve, and by chapter four hundred and ninety-eight of the acts of the year nineteen hundred and thirteen, is hereby further amended by striking out the said section and inserting in place thereof the following:

*Section 1.* All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, belonging to inhabitants of the commonwealth, and all real estate within the commonwealth, or any interest therein, belonging to persons who are not inhabitants of the commonwealth, which shall pass by will, or by the laws regulating intestate succession, or by deed, grant or gift, except in cases of a *bona fide* purchase for full consideration in money or money's worth, made or intended to take effect in possession or enjoyment after the death of the grantor or donor, and any beneficial interest therein which shall arise or accrue by survivorship in any form of joint ownership in which the decedent joint owner contributed during his life any part of the property held in such joint ownership or of the purchase price thereof, to any person, absolutely or in trust, except to or for the use of charitable, educational or religious societies or institutions, the property of which is by the laws of this commonwealth exempt from taxation or for or upon trust for any charitable purposes, to be carried out within this commonwealth, or to or for the use of the commonwealth or any city or town within this commonwealth for public purposes, shall be subject to a tax as follows: —

*Class A.* In case such property or interest therein shall so pass or any beneficial interest therein shall so accrue to or for the benefit of a husband, wife, parent, child, grandchild, adopted child or adoptive parent of the deceased, the tax shall be at the following rates:—

On its value not exceeding twenty-five thousand dollars, at 1% ;

On the excess of its value over twenty-five thousand dollars, and not exceeding fifty thousand dollars, at 2% ;

On the excess of its value over fifty thousand dollars, and not exceeding two hundred and fifty thousand dollars, at 4% ;

On the excess of its value over two hundred and fifty thousand dollars, and not exceeding one million dollars, at 5% ; and

On the excess of its value over one million dollars, at 6%.

*Class B.* In case such property or interest therein shall so pass or any beneficial interest therein shall so accrue to or for the benefit of a lineal ancestor or descendant other than those included in *Class A*, a wife or widow of a son, the husband of a daughter, or a lineal descendant of an adopted child, or a lineal ancestor of an adoptive parent of the deceased, the tax shall be at the following rates:—

On its value not exceeding ten thousand dollars, at 1% ;

On the excess of its value over ten thousand dollars, and not exceeding twenty-five thousand dollars, at 2% ;

On the excess of its value over twenty-five thousand dollars, and not exceeding fifty thousand dollars, at 4% ;

On the excess of its value over fifty thousand dollars, and not exceeding two hundred and fifty thousand dollars, at 5% ;

On the excess of its value over two hundred and fifty thousand dollars, and not exceeding one million dollars, at 6% ; and

On the excess of its value over one million dollars, at 7%.

*Class C.* In case such property or interest therein shall so pass or any beneficial interest therein shall so accrue to or for the benefit of a brother, sister, step-child, step-parent, half brother, half sister, nephew or niece of the deceased, the tax shall be at the following rates:—

On its value not exceeding ten thousand dollars, at 3% ;

On the excess of its value over ten thousand dollars, and not exceeding twenty-five thousand dollars, at 5% ;

On the excess of its value over twenty-five thousand dollars, and not exceeding fifty thousand dollars, at 7% ;

On the excess of its value over fifty thousand dollars, and not exceeding two hundred and fifty thousand dollars, at 8% ;

On the excess of its value over two hundred and fifty thousand dollars, and not exceeding one million dollars, at 9% ; and

On the excess of its value over one million dollars, at 10%.

*Class D.* In case such property or interest therein shall so pass or any beneficial interest therein shall so accrue to or for the benefit of any person not included in any of the foregoing classes, the tax shall be at the following rates:—

On its value not exceeding ten thousand dollars, at 5% ;

On the excess of its value over ten thousand dollars, and not exceeding twenty-five thousand dollars, at 6% ;

On the excess of its value over twenty-five thousand dollars, and not exceeding fifty thousand dollars, at 7% ;

On the excess of its value over fifty thousand dollars, and not exceeding two hundred and fifty thousand dollars, at 8% ;

On the excess of its value over two hundred and fifty thousand dollars, and not exceeding one million dollars, at 9% ; and

On the excess of its value over one million dollars, at 10%.

Administrators, executors and trustees, grantees or donees under conveyances or gifts made during the life of the grantor or donor, and persons to whom beneficial interests shall accrue by survivorship, shall be liable for such taxes, with interest, until the same have been paid; but no property or inter-

est therein, which shall pass or accrue to or for the use of a husband, wife, father, mother, child, adopted child or adoptive parent of the deceased, unless its value exceeds ten thousand dollars, and no other property or interest therein, unless its value exceeds one thousand dollars, shall be subject to the tax imposed by this act, and no tax shall be exacted upon property or interests so passing or accruing which shall reduce the value of such property or interest below the amount of the above exemptions. All taxes under this act shall be paid out of and chargeable to capital and not income, unless otherwise provided in a will or codicil, or deed or other instrument creating the grant or gift, but nothing herein contained shall affect any right of the commonwealth to collect such tax or lien therefor.

§ 2. Section four of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, codified as section four of Part IV of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, as amended by section two of chapter five hundred and twenty-seven of the acts of the year nineteen hundred and nine, and by section one of chapter one hundred and fifty-two of the General Acts of the year nineteen hundred and fifteen, is hereby further amended by striking out the said section and inserting in place thereof the following:—*Section 4.* Except as hereinafter provided, taxes imposed by the provisions of this act upon property or interests therein, passing by will or by the laws regulating intestate succession, shall be payable to the Treasurer and Receiver General by the executors, administrators or trustees at the expiration of one year after the date of the giving of bond by the executors, administrators or trustees first appointed.

If the probate court, acting under the provisions of section thirteen of chapter one hundred and forty-one of the Revised Laws, has ordered the executor or administrator to retain funds to satisfy a claim of a creditor, the payment of the tax may be suspended by the court to await the disposition of such claim.

Except as hereinafter provided, taxes imposed by the provisions of this act upon property or interests therein, passing by deed, grant or gift to take effect in possession or enjoyment after the death of the grantor or donor, or upon beneficial interests arising or accruing by survivorship in any form of joint ownership shall be payable by the grantee, donee or survivor at the expiration of one year after the date when his right of possession or enjoyment accrues. In all cases where there shall be a grant, gift, devise, descent, or bequest to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, the taxes thereon shall be payable by the executors, administrators or trustees in office when such right of possession accrues, or, if there is no such executor, administrator or trustee, by the person or persons so entitled thereto, at the expiration of one year after the date when the right of possession accrues to the person or persons so entitled. If the taxes are not paid when due, interest shall be charged and collected from the time the same became payable. Property of which a decedent dies seized or possessed, subject to taxes as aforesaid, in whatever form of investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not affect any personal property after the same has been sold or disposed of for value by the executors, administrators or trustees. The lien charged by this act upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel, or by an order or decree of the probate court discharging said lien and securing the payment to the commonwealth of the tax due or to become due by bond or deposit as hereinafter provided, or by transferring such lien to other real estate owned by the owner or owners of said real estate or separate parcel thereof.

§ 3. So much of section three of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, codified as section three of Part IV of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and amended by chapter five hundred and two of the acts



of the year nineteen hundred and eleven, as was not repealed by section two of chapter six hundred and seventy-eight of the acts of the year nineteen hundred and twelve, is hereby repealed.

§ 4. This act shall take effect upon its passage, but it shall apply only to property or interests therein passing or accruing upon the death of persons who die subsequently to the passage herof. Property or interests therein passing or accruing upon the death of persons dying prior to the passage herof shall remain subject to the laws then in force. (Approved May 26, 1916.)

## 1918 AMENDMENTS.

### GENERAL ACTS OF 1918, CHAPTER 14.

An Act to provide a discount on advance payments of inheritance taxes.

*Be it enacted, etc., as follows:*

SECTION 1. Section four of chapter five hundred and sixty-three of the acts of nineteen hundred and seven, codified as section four of Part IV of chapter four hundred and ninety of the acts of nineteen hundred and nine, as amended by section two of chapter five hundred and twenty-seven of the acts of nineteen hundred and nine, by section one of chapter one hundred and fifty-two of the General Acts of nineteen hundred and fifteen, and by section two of chapter two hundred and sixty-eight of the General Acts of nineteen hundred and sixteen, is hereby further amended by adding at the end thereof the following new paragraph:—If a tax imposed by the provisions of this act is paid prior to the date upon which it is due, it shall be discounted at the rate of 4% a year.

§ 2. This act shall take effect upon its passage. (Approved February 14, 1918.)

### GENERAL ACTS OF 1918, CHAPTER 191.

An Act to provide for an additional legacy and succession tax.

*Be it enacted, etc., as follows:*

SECTION 1. All property subject to a legacy and succession tax under the provisions of section one of chapter five hundred and sixty-three of the acts of nineteen hundred and seven, codified as section one of Part IV of chapter four hundred and ninety of the acts of nineteen hundred and nine, as amended by section one of chapter two hundred and sixty-eight of the General Acts of nineteen hundred and sixteen, and of any further amendments thereof or additions thereto, shall be subject to an additional tax of twenty-five per cent of all taxes imposed thereon by said acts. All provisions of law relative to the determination, certification, payment, collection and abatement of such legacy and succession taxes shall apply to the additional tax imposed by this act.

§ 2. This act shall take effect upon its passage, but it shall apply only to property or interests therein passing or accruing upon the death of persons who die subsequent to the passage herof and within one year thereafter. (Approved May 3, 1918.)

**Prior Statutes:** L. 1891, ch. 425; L. 1892, ch. 379; L. 1893, ch. 432; L. 1895, ch. 307; L. 1895, ch. 430; L. 1896, ch. 108; L. 1900, ch. 371; L. 1901, ch. 277; L. 1901, ch. 297; L. 1902, ch. 473; L. 1903, ch. 248; L. 1903, ch. 251; L. 1903, ch. 276; L. 1904, ch. 421; L. 1905, ch. 367; L. 1905, ch. 470; L. 1906, ch. 436; L. 1907, ch. 452; L. 1907, ch. 563; L. 1908, pg. 840; L. 1908, ch. 268; L. 1908, ch. 624; L. 1909, ch. 266; L. 1909, ch. 268.

## MASSACHUSETTS CASES.

Year.	Case.	Citation.	Page.
1894	{ Minot v. Winthrop . . . . . Williams v. Bowditch . . . . . West v. Phillips . . . . . }	162 Mass. 113	29
1895	Essex v. Brooks . . . . .	164 Mass. 79	42

Year.	Case.	Citation.	Page.
1898	Emmons v. Shaw .....	171 Mass. 410	46
1898	Callahan v. Woodridge .....	171 Mass. 595	49
1899	Greves v. Shaw .....	173 Mass. 205	53
1899	Moody v. Shaw .....	173 Mass. 375	57
1899	Balch v. Shaw .....	174 Mass. 144	59
1899	Crocker v. Shaw .....	174 Mass. 266	63
1899	Frothingham v. Shaw .....	175 Mass. 59	65
1900	Hooper v. Shaw .....	176 Mass. 190	69
1901	Hooper v. Bradford .....	178 Mass. 95	70
1901	Howe v. Howe .....	179 Mass. 546	72
1902	Rice v. Bradford .....	180 Mass. 545	79
1904	First Universalist Society v. Bradford.....	185 Mass. 310	80
1904	Stevens v. Bradford .....	185 Mass. 439	84
1905	Bradford v. Storey .....	189 Mass. 104	86
1907	Kingsbury v. Chapin .....	196 Mass. 533	89
1908	McCurdy v. McCurdy .....	197 Mass. 248	93
1908	Dow v. Abbott .....	197 Mass. 283	96
1910	Pierce v. Stevens .....	205 Mass. 219	100
1910	{ New England Trust Co. v. Abbott..... }	205 Mass. 279	104
1911	{ Attorney General v. New England Trust Co }		
1911	{ Kinney v. Treasurer and Receiver General..... }	207 Mass. 368	106
1911	{ Minot v. Treasurer and Receiver General..... }	207 Mass. 588	109
1911	{ Davis v. Treasurer and Receiver General..... }	208 Mass. 343	113
1911	{ Attorney General v. Stone .....	209 Mass. 186	116
1911	{ Batt v. Treasurer and Receiver General..... }	209 Mass. 319	121
1911	{ Attorney General v. Rafferty .....	209 Mass. 321	123
1911	{ State Street Trust Co. v. Treasurer and Receiver }		
1911	{ General .....	209 Mass. 373	124
1911	{ State Street Trust Co. v. Friebe..... }		
1911	{ Baxter v. Treasurer and Receiver General..... }	209 Mass. 459	130
1912	{ Attorney General v. Barney..... }	211 Mass. 134	134
1912	{ Burnham v. Treasurer and Receiver General.... }	212 Mass. 165	136
1913	{ Peabody v. Treasurer and Receiver General..... }	215 Mass. 129	138
1913	{ Welch v. Treasurer and Receiver General..... }	217 Mass. 348	141
1913	{ Attorney General v. Skehill..... }	217 Mass. 364	143
1914	{ Clark v. Treasurer and Receiver General..... }	218 Mass. 292	145
1914	{ Attorney General v. Roche..... }	219 Mass. 601	147
1914	{ Attorney General v. Laycock..... }	221 Mass. 146	149
1914	{ Bliss v. Bliss..... }	221 Mass. 201	151
1914	{ Borden v. Treasurer and Receiver General..... }	221 Mass. 212	160.
1915	{ Loring v. Gardner..... }	221 Mass. 571	161
1915	{ Walker v. Treasurer and Receiver General..... }	221 Mass. 600	163
1915	{ Palmer v. Treasurer and Receiver General..... }	222 Mass. 263	166
1915	{ Attorney General v. Clark..... }	222 Mass. 291	168
1915	{ Welch v. Treasurer and Receiver General..... }	223 Mass. 87	171
1916	{ Hawkrige v. Treasurer and Receiver General... }	223 Mass. 134	179
1916	{ New England Trust Co. v. White..... }	224 Mass. 332	181
1916	{ Gardiner v. Treasurer and Receiver General.... }	225 Mass. 355	184
1917	{ Tyler v. Treasurer and Receiver General..... }	226 Mass. 306	198
1917	{ Hill v. Treasurer and Receiver General..... }	227 Mass. 331	201
1917	{ Dana v. Treasurer and Receiver General..... }	227 Mass. 562	205
1918	{ Dana v. Dana..... }	226 Mass. 297	
1918	{ Clark, Exr., v. Treasurer and Receiver General.. }	226 Mass. 301	
1918	{ Mitton v. Treasurer and Receiver General..... }	229 Mass. 140	
1918	{ Hill v. Treasurer and Receiver General..... }	229 Mass. 474	
1919	{ Attorney General v. Thorpe..... }	230 Mass. 25	
1919	{ Priestley v. Treasurer and Receiver General..... }	230 Mass. 450	
1919	{ Maguire v. Tax Commissioner..... }	230 Mass. 503	

## MASSACHUSETTS FORMS.

## NONRESIDENT EXECUTOR'S AFFIDAVIT.

This affidavit should be mailed to Hon. William D. T. Trefry, Tax Commissioner, Room 235, State House, Boston, when completed.

(NONRESIDENT DECEDENT.)

## RE ESTATE OF

Late of.....  
Date of Death.....191.....  
Date of Executor's Bond.....191.....

Affidavit  
of  
Executor  
or  
Administrator.

NOTE.—If no bond is required, give date of appointment. If ancillary administrator is appointed in Mass. give date of Mass. bond.  
Attorney.....  
Address of Attorney.....

State of..... ss.  
County of.....

(1) I, ....., on oath depose and say that my post-office address is ..... street, City or Town of ....., the Execut.....

State of .....; that I am duly-appointed a Administrat...

of the will of ....., late of ....., in the estate of ....., and State of ....., who died on the ..... day of .....191.....; that the date of my bond as such Administrat... is .....191.....; and that Execut..... (See note in brackets above.)

the said bond is now in full force:

(2) That the total value of all real estate situated in Massachusetts, of which said decedent died seized or possessed, over which he had a power of appointment, or which prior to his death he had transferred by deed, grant or gift (except *bona fide* sales for full consideration in money or money's worth) made or intended to take effect in possession or enjoyment after death, at its actual value on the date of his death was REAL ESTATE, \$..... an itemized statement of which is hereto annexed, made a part hereof, and marked "Schedule A."

(3) That the total value of all interests in Massachusetts real estate other than that listed in Schedule "A," including mortgages on real estate in Massachusetts and shares or other certificates of interest in real estate trusts owning real estate in Massachusetts, owned by said decedent, over which he had a power of appointment, or which he had transferred by deed, grant or gift (except *bona fide* sales for full consideration in money or money's worth) made or intended to take effect in possession or enjoyment after death, at its actual value on the date of his death was

OTHER INTERESTS IN REAL ESTATE, \$..... an itemized statement of which is hereto annexed, made a part hereof, and marked "Schedule B."

IF THE DECEDENT OWNED NO REAL ESTATE, MORTGAGES NOR OTHER INTERESTS IN REAL ESTATE WITHIN MASSACHUSETTS, HAD NO POWER OF APPOINTMENT OVER ANY SUCH PROPERTY,

AND HAD TRANSFERRED NO SUCH PROPERTY BY DEED, GRANT OR GIFT AS ABOVE STATED, *NO FURTHER INFORMATION IS NECESSARY.*

(4) That hereto annexed and made a part hereof is a true copy of the will and codicils of the deceased as allowed by the probate court of the State of domicile.

(5) That hereto annexed, marked "Schedule C," is a true list of all the legatees and devisees or heirs at law and next of kin who take any share of the estate, with their legal relationships to the decedent and the dates of birth of any who take life interests or who are remaindermen.

(6) That hereto annexed, marked "Schedule D," is a true statement of the total value of all real estate and of all personal estate both within and without Massachusetts.

(7) That hereto annexed, marked "Schedule E," is a true itemized statement of the debts and expenses of administration in Massachusetts, and a true statement of the total amount of all other debts and expenses of administration.

The information here requested is unnecessary where the decedent left NO PROPERTY in Massachusetts.

#### SCHEDULE "A."

##### Itemized List of All Real Estate in Massachusetts.

Description and Location.	Value.
.....	.....
.....	.....
.....	.....

#### SCHEDULE "B."

##### Itemized List of Mortgages or Other Interests in Real Estate in Massachusetts.

.....	.....
.....	.....
.....	.....

#### SCHEDULE "C."

##### List of Legatees and Devisees or Heirs at Law Who Take any Share of the Estate.

Name.	Residence.	Legal Relationship.	Date of Birth.	Share.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

#### SCHEDULE "D."

Total value of all real estate, *both within and without* Massachusetts

TOTAL REAL ESTATE .....

Total value of all personal estate *within* Massachusetts .....

(Including all personal property physically located within the State, and shares of stock in Mass. Corporations wherever located.)

Total value of all other personal estate *wherever situated* .....

TOTAL PERSONAL ESTATE .....

(1) Total amount of all debts and expenses *outside* Massachusetts \$.....

(2) Total amount of all debts and expenses *within* Massachusetts (itemized below) .....

Items of (2)		Items of (2) Cont'd	
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
Signature.....			

State of ..... Administrat..... Execut.....  
.....ss. ....191....

Then personally appeared the above-named.....  
to me personally known, and made oath that the foregoing statements by h  
subscribed are full, true and correct.

.....  
*Justice of the Peace or Notary Public.*

The officer before whom the affiant is sworn is requested to see that every item  
is marked.

OFFER OF SETTLEMENT.

Under Provisions of Section 7, Chapter 490,  
Acts of the Year 1909 as Amended by Sec-  
tion 4, Chapter 527, Acts of the Year 1909.

Section 7. Any person or persons entitled to a future interest or to future  
interests in any property may pay the tax on account of the same at any time  
before such tax would be due in accordance with the provisions hereinbefore  
contained, and in such cases the tax shall be assessed upon the actual value of  
the interest at the time of the payment of the tax, and such value shall be  
determined by the tax commissioner as hereinafter provided. In every case  
in which it is impossible to compute the present value of any interest the tax  
commissioner may, with the approval of the attorney-general, effect such settle-  
ment of the tax as he shall deem to be for the best interests of the common-  
wealth, and payment of the sum so agreed upon shall be a full satisfaction of  
such tax.

.....191....

Hon. WILLIAM D. TREFRY,  
Tax Commissioner,  
State House, Boston.

*Sir:*—In the matter of the estate of .....  
late of ..... the undersigned being all the parties in  
interest hereby offer to The Commonwealth of Massachusetts the sum of  
\$..... to be paid on or before .....191.... in settlement  
of all legacy and succession taxes due or to become due upon the interests in  
the property scheduled in the inventory of the estate filed .....  
191...., passing under the ..... clause .... of the will of the deceased to  
.....  
.....

Deeming it to be for the best interest  
of the Commonwealth, the above of-  
fer is accepted.

.....  
*Tax Commissioner.*

Approved,

.....  
*Attorney-General.*

## Request for Assessment of Tax on Future Interests.

Under Provisions of Section 7, Chapter 490,  
Acts of the Year 1909, as Amended by Sec-  
tion 4, Chapter 527, Acts of the Year 1909.

Section 7. Any person or persons entitled to a future interest or to future interests in any property may pay the tax on account of the same at any time before such tax would be due in accordance with the provisions hereinbefore contained, and in such cases the tax shall be assessed upon the actual value of the interest at the time of the payment of the tax, and such value shall be determined by the tax commissioner as hereinafter provided. In every case in which it is impossible to compute the present value of any interest the tax commissioner may, with the approval of the attorney-general, effect such settlement of the tax as he shall deem to be for the best interests of the commonwealth, and payment of the sum so agreed upon shall be a full satisfaction of such tax.

Hon. WILLIAM D. TREFRY, .....191....  
Tax Commissioner,  
State House, Boston.

Sir:—In the matter of the estate of .....  
late of ..... the undersigned being entitled to a  
future interest, or to future interests, respectfully request that the tax be  
computed upon such interest or interests on the present worth of the same:  
payment to be made on or before .....19....

.....  
.....  
.....  
.....  
.....

Note: If this request is signed by executors or attorneys as representing the persons entitled to future interests, the authority for such representation must be alleged.

## Inventory.

*Filed with the Tax Commissioner in Accordance with the Provisions of Chap.  
490, Part IV, Acts of 1909, as Amended by Sect. 5, Chap. 527,  
Acts of 1909.*

I, ..... P. O. Address .....  
..... Execut..... Will  
duly appointed ..... of the ..... of .....  
..... Administrat.... Estate

late of ..... do hereby depose and say that the within  
is a full and complete inventory of all the property of the said decedent of  
every kind and description which has come to my possession or knowledge as  
Execut.....

such ..... and that the values given are the actual market values  
Administrat....

on the day of death of said decedent, to wit: .....  
Amount of Personal Estate as per Schedule.....\$.  
Amount of Real Estate as per Schedule.....\$.

Total.....\$.

Signed.....

Execut..... Administrat.....

Date of bond:.....

.....ss.  
 .....191....  
 Then personally appeared the above-named.....  
 to me personally known, and made oath that the within schedules constitute a  
 full and complete inventory of all the estate of the said decedent which has  
 come to ..... possession or knowledge.

.....  
*Justice of the Peace.*

Schedule of Personal Estate, wherever situated, in Detail.

	Dollars.	Cts.
.....	.....	.....
.....	.....	.....
.....	.....	.....

# THE COMMONWEALTH OF MASSACHUSETTS

## DEPARTMENT OF TAX COMMISSIONER

State House, Boston.

Compliance with the following suggestions in compiling inventories will  
 facilitate the computation of the Legacy Tax. All valuations to be made  
 as of the date of death.

### PERSONAL PROPERTY.

In listing the property appraised, describe accurately and concisely each  
 item as follows:—

**BONDS**—Show quantity and denomination, *exact title of corporation*, state  
 or country of incorporation, place of business, interest rate and maturity  
 date. Indicate whether registered or coupon, and give such other infor-  
 mation as will enable the particular class or issue to be identified.

#### *Example.*

10—\$1,000 Am. Tel. & Tel. Co., N. Y., Conv. gold 4% Coupon, 1936 opt.  
 1914 M. & S. at 81=8100. Bonds are to be appraised at market value  
 with interest to the day of death. All uncollected or overdue coupons on  
 such bonds should be included and listed separately.

**STOCKS**—State the number of shares, whether common or preferred,  
*exact title of corporation*, state or country of incorporation, place of busi-  
 ness and the par value of the shares.

**NOTES**—Indicate amount due on principal and show interest rate and the  
 date to which interest had been paid at the time of the decedent's death.

**BANK DEPOSITS**—Appraise to include all interest and dividends to the  
 credit of the account at the date of death, and indicate by a note that this  
 has been done.

When any interest in property other than an entire interest is inventoried,  
 indicate the fractional part.

### REAL ESTATE.

Show the location of each parcel by city or town and give the area. Indi-  
 cate the street and the number if any. State character of land if unimproved  
 and character of buildings if any.

In the case of real estate subject to mortgage, show the total value of each  
 parcel, and the amount of mortgage indebtedness applicable to each parcel,  
 carrying out the equity only in the valuation column.

In the case of mortgage indebtedness applicable to undivided interests in  
 realty, indicate plainly that the mortgage shown is applicable to the fractional  
 interest or to the entire parcel.

If the decedent owned an undivided interest in realty, such interest only  
 should be appraised, but the decedent's fractional interest in each parcel must  
 be indicated. The total value of the property and the names of the co-tenants  
 should also appear.

WILLIAM D. T. TREFFY,  
*Tax Commissioner.*

## Schedule of Real Estate in Detail situated within the Commonwealth.

	Dollars.	Cts.
.....	.....	.....
.....	.....	.....
.....	.....	.....

NOTE.—In the absence of this waiver, three months from date of determination of value must elapse before the tax is computed.

WAIVER OF APPEAL FROM VALUATION, AND WAIVER OF CLAIM FOR DEDUCTIONS OF FOREIGN LEGACY TAXES.

Estate of .....  
 Late of .....

.....19....

Hon. WILLIAM D. TREFRY,  
 Tax Commissioner,  
 State House, Boston.

DEAR SIR:—

Being duly authorized so to do, the undersigned hereby accepts the Tax Commissioner's valuation of the property in the above-named estate, and waives all rights of appeal thereon in behalf of the said estate; and waives all rights to deductions on account of foreign legacy taxes, the evidence of the assessment and payment of which is not presented herewith.

..... Execut..... Administrat.....

NOTICE.

This affidavit, together with *all other information* necessary to the computation of the tax, should be filed in the office of the Tax Commissioner at least *Three Weeks* before the tax becomes due.

The inheritance tax becomes due at the expiration of one year from the date of giving bond by the original executor or administrator (or two years thereafter, if the death occurred prior to April 8, 1915) *and draws interest from such due date at the rate of 6% per annum.*

The tax upon *Future Interests* becomes due *One Year* from the date the gift vests in possession or enjoyment. Such tax may be paid upon the present worth of the future interest at any time upon request by the persons entitled thereto. A form for such request will be furnished.

*The Tax Commissioner has no authority to abate interest.*

Resident Decedent.

Affidavit of Debts, Expenses, Etc.

Estate of .....  
 Late of .....  
 Date of Death..... Probate Docket No. ....

INSTRUCTIONS.

*Read Carefully.*

*In General:* No debt or expense of any kind should be included in this affidavit unless the same is a proper charge against PRINCIPAL of the estate. Fees based on *income* are not allowable for the purpose of the computation of the tax.

*Mortgage Notes* secured by real estate of the decedent should not be included as debts *if the equity only* of such real estate has been valued for taxation. If a mortgage note is included in this affidavit, state by what property of the deceased it was secured.



*Local Taxes* and assessments should not be included as debts or expenses of administration unless the same were assessed as of April first prior to the death of the decedent. *When taxes or water rates are included, give the year for which they were assessed.*

*Foreign Legacy Taxes.* If the decedent died prior to May 26, 1916, the original documents showing the details of the assessment of the foreign tax, together with the receipt for its payment, should be enclosed for the inspection of the Tax Commissioner. These papers will be returned after examination. If the death occurred on or subsequent to May 26, 1916, foreign legacy taxes may be included in this affidavit as expenses of administration provided the will directs the payment of all legacy and succession taxes from the residue of the estate, but not otherwise.

*Every question should be fully and carefully answered, and it is the duty of the affiant to fully inform himself concerning all matters covered by this form.*

## DEBTS AND EXPENSES.

## 1. I

We ..... (Address) .....  
 ..... duly appointed Administrat.... estate  
 ..... Execut..... of the will  
 of ..... late of .....  
 deceased, hereby depose and say that the following is a true list of the debts, funeral expenses and expenses of administration paid, or to be paid, from the assets of the estate of said decedent.

Item.	Dollars	Cents
(a) <i>Debts actually contracted by the decedent</i>	.....	.....
.....	.....	.....
.....	.....	.....
(b) <i>Funeral expenses</i>	.....	.....
.....	.....	.....
(c) <i>Expenses of administration itemized</i>	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
Total.....	.....	.....

## ADDITIONAL PROPERTY.

2. The following property, *other than interest accruing after the death*, has come to my knowledge or possession since the inventory of this estate was filed, to wit:—(If there is none please write “nothing” at the right.)

.....	.....	.....
.....	.....	.....
Total.....	.....	.....

3. Does the inventory of the property of the estate, together with the above additions, constitute a full and complete list of all the property in which the said decedent had any interest whether within or without the Commonwealth, which has come to the knowledge or possession of the Executors or Administrators? .....

## DEED, GRANT OR GIFT.

4. Did the said decedent make any deed, grant or gift intended to take effect in possession or enjoyment after h. . death except *bona fide* sales for full consideration in money or money's worth? .....

(This question embraces death-bed gifts, trust-deeds, etc.)

## JOINT OWNERSHIP.

5. Did the decedent at the time of his death own jointly with any other person or persons who had rights by survivorship therein any stocks, bonds, bank accounts, real estate or any other property? .....

If so, did the decedent contribute to such joint ownership any part of the property so held or of the purchase price thereof? .....  
(State details.)

## POWER OF APPOINTMENT.

6. Did the said decedent have a power of appointment over *any property not included in the inventory* of this estate? .....  
(Whether or not such power was exercised is not material, and copy of the instrument creating the power and an inventory of the property should be furnished.)

## MARKED ENVELOPES, ETC.

7. Did the decedent leave any property within or without the Commonwealth, marked with the name of any person to whom the same had not been *actually delivered* prior to death? .....  
(If so, furnish full details.)

## LEGATEES AND DISTRIBUTEES.

*Please Follow Instructions Carefully.*

In case of persons taking by representation, group together all who take through a common ancestor, giving date of death and relationship of such ancestor.

8. I further depose and say that the following is a true list of *all the persons or corporations named in the will or who are entitled to any share of the estate*, their residences and legal relationships to the deceased, and the date of birth of such as take life interests or are remaindermen after life estates or terms of years: —

Name. (Show relationships of legatees by di- vision into family groups)	Residence	Legal Relationship to the Decedent	Date of Birth	*Whether Living at Death of Decedent
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

\* If "no," state whether such beneficiary left issue who will take by right of representation under the statute, giving names, etc., of such issue, if any. If since deceased give date of death.

Signatures { .....  
.....  
.....  
Executors or Administrators.

The officer before whom the affiant is sworn is requested to see that *every question* is answered.

..... ss. .... 19....

Then personally appeared the above-named .....  
and made oath that the above statements by ..... subscribed are true.

Before me,

.....  
Justice of the Peace or Notary Public.  
My commission will expire .....

No. ....

## DETERMINATION OF TAX COMMISSIONER.

## THE COMMONWEALTH OF MASSACHUSETTS.

## OFFICE OF THE TAX COMMISSIONER

State House, Room 235.

Boston, ..... 191...

Estate of .....

Late of .....

To .....

In accordance with the provisions of section 19 of Part IV of chapter 490 of the Acts of the year 1909, I determine the value of the property of said decedent within the jurisdiction of the Commonwealth of Massachusetts, disclosed by information on file, to be as below stated. Upon this valuation, after deductions for debts, funeral expenses, expenses of administration and exempted legacies or shares, the evidence of which has been seasonably submitted, the tax, if any, will be computed.

Personal Estate, as per within schedule..... \$ .....

Real Estate, as per within schedule..... \$ .....

\$ .....

Tax Commissioner.

## Schedule of Real Estate in Detail.

	Dollars.	Cts.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

## MICHIGAN.

Taxes all property of nonresidents within the State, including stock in domestic corporations.

TABLE OF RATES PRIOR TO 1919.

CLASS OR RELATIONSHIP	Exemption	Rate of tax
Grandparents, parents, husband, wife, child, brother, sister, wife or widow or son, husband of daughter, adopted or mutually acknowledged child, lineal descendants.	Wife, \$5,000; others, \$2,000	If property exceeds exemption 1% on all personal prop- erty.
All others.....	\$100	5% on all including real estate.

TABLE OF RATES AND EXEMPTIONS UNDER AMENDMENTS OF 1919.

Class or Relationship	Exemption	Up to \$50,000	\$50,000 to \$500,000	In ex- cess of \$500,000
Grandparents, parents, husband, wife, child, brother, sister, wife or widow or son, husband of daughter, adopted or mutually acknowledged child, lineal descendants.	Wife, no tax, unless property exceeds \$5,000, then no exemption.	1%	2%	4%
	Others, no tax, unless property exceeds \$2,000, then no exemption.	1%	2%	4%
Non-resident aliens and corporation not chartered in this country.	None	25%	25%	25%
All others .....	None	5%	10%	20%

## THE STATUTE.

ACT 188 OF THE PUBLIC ACTS OF 1899, AS AMENDED BY ACT 195 OF THE PUBLIC ACTS OF 1903, ACTS 155 AND 328 OF THE PUBLIC ACTS OF 1907, ACT 44 OF THE PUBLIC ACTS OF 1909, ACTS 73 AND 265 OF THE PUBLIC ACTS OF 1911, ACTS 17 AND 30 OF THE PUBLIC ACTS OF 1913, ACTS 195 AND 198 OF THE PUBLIC ACTS OF 1915, ACT 336 OF THE PUBLIC ACTS OF 1917, AND ACTS 92 AND 98, 1919.

Section 1. After the passage of this act a tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of one hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:

First, When the transfer is by will or by the intestate laws of this State from any person dying seized or possessed of the property while a resident of this State;

Second, When the transfer is by will or intestate law of property within the State, and the decedent was a nonresident of the State at the time of his death;

Third, When the transfer is of property made by a resident or by non-resident, when such nonresident's property is within this State, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect, in possession or enjoyment at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled in possession or expectancy to any property or the income thereof by any such transfer, whether made before or after the passage of this act;

Fourth, Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the

power failing to exercise such power, taking effect at the time of such omission or failure.

§ 2. When the property or any beneficial interest therein so passed or transferred exceeds the exemption hereinafter specified and shall not exceed in value fifty thousand dollars, the tax hereby imposed shall be:

First, Where the person or persons entitled to any beneficial interest in such property shall be the grandfather, grandmother, father, mother, husband, wife, child, brother, sister, wife or widow of the son, or the husband of the daughter, or to or for the use of any child or children adopted as such in conformity with the laws of this State or any other state or country, of the decedent grantor, donor or vendor, or for the use of any persons to whom such decedent grantor, donor or vendor stood in the mutually acknowledged relation of a parent: Provided, however, That such relationship began at or before the child's seventeenth birthday and continued until the death of such decedent grantor, donor, vendor, or to or for the use of any lineal descendant of such decedent grantor, donor or vendor, such transfer of property shall not be taxable under this act, unless it is personal property of the clear market value of two thousand dollars or over, and when the transfer is to a wife such transfer of property shall not be taxable unless it is personal property of the clear market value of five thousand dollars or over, in which case the entire transfer shall be taxed under this act at the rate of 1% of the clear market value thereof. The exemptions of sections one and two of this act shall apply and be granted to each beneficiary's interest therein, and not to the entire estate of a decedent. No deductions or exemptions from such tax shall be made for any allowance granted by the order of any court for the maintenance and support of the widow or family of a decedent pending the administration of the estate, when there is income from such estate accruing after death, which is available to pay such allowance, or for a longer period than one year, or for a greater amount than is actually used and expended for the maintenance and support of such widow or family for one year;

Second, Except as hereinafter provided, in all other cases the tax shall be at the rate of 5% upon the clear market value of the property transferred;

Third, Upon the transfer of property in any manner hereinbefore described, to or for the use of collateral relations or strangers in blood who are aliens not residing in the United States, or to or for the use of any corporation which is not chartered by the authority of the government of the United States or of any state, a tax of 25% shall be levied and collected;

Fourth, The foregoing rates are for convenience termed the primary rates. When the market value of such property or interest exceeds fifty thousand dollars the rate of tax upon such excess shall be as follows:

Subdivision (a) Upon all in excess of fifty thousand dollars and up to five hundred thousand dollars, two times the primary rate;

Subdivision (b) Upon all in excess of five hundred thousand, three times the primary rate.

Fifth, The provisions of subdivisions (a) and (b) of paragraph four of this section, shall not apply to the rate as fixed by paragraph three of this section.

(As amended by chap. 98, L. 1919.)

§ 3. Makes the tax a lien on the property transferred and the transferee as well as the executor or administrator personally liable until paid. Provides for receipts which must be produced to entitle the executor or administrator to a discharge. Taxes accrue at death except in the case of remainders dependent upon some uncertain future event or contingency in which case they are due when the beneficiary comes into actual possession.

§ 4. Allows a discount of 5% if the tax is paid within twelve months. If not paid within eighteen months interest from date of death at 8% is charged. In case of unavoidable delay interest at 6% from and after eighteen months is charged.

§ 5. Requires the executor or administrator to deduct the tax from a money legacy, to collect it from the beneficiaries in case of property to whom it may not be delivered until the tax is paid. If legacy is made a charge on real property the heir or devisee must deduct the tax before paying the legacy.

§ 6. Makes provision for proportionate fund if debts are proved after distribution.

§ 7. Provides that remaindermen may elect not to pay the tax until they get the property by filing a bond in three times the amount of the tax and an inventory of the property within one year of death and renewing bond every five years.

§ 8. Taxes bequests to executors in lieu of the tax in excess of reasonable value of services.

§ 9. If a foreign executor, administrator or trustee shall assign or convey any stock or obligation in this State standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits or other assets of a decedent, including the shares of the capital stock of, or other interests in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the county treasurer at least five days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets of the estate of a nonresident decedent including the shares of the capital stock of, or other interests in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and penalty which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock or other interests in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the proper county treasurer consents thereto in writing. And it shall be lawful for the said county treasurer and it shall be his duty to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice and to allow such examination, and to retain a sufficient portion or amount to pay such tax and penalty as herein provided, shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest and penalty due or thereafter to become due upon said securities, deposits or other assets, including shares of the capital stock of, or other interests in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer; and the payments as herein provided shall be enforced in an action of assumpsit to be instituted and maintained by the Attorney General or other person or officer duly authorized by him, and any judgment rendered in such action shall carry costs to be taxed as in other cases. No mortgage on real estate located in this State shall be discharged when said mortgage constitutes a part of the estate of a tion is made to discharge said mortgage. Any register of deeds who knowingly violates the provisions of this section shall be liable for the amount of said tax, to be recovered in an action brought by the Attorney General as herein provided. [As amended by chap. 92, L. 1919.]

§ 10. Gives jurisdiction to the probate court administering the estate in transfer tax matters.

§ 11. Provides for the appointment of appraisers and for the computation of life estates and remainders by the Commissioner of Insurance on mortality tables at the 5% rate.

§ 12 and 13. Provide for hearings before the appraiser on due notice, his report, appeal and rehearing before the probate judge closely following the New York practice.

§ 14. Provides for proceedings to collect delinquent taxes.

§§ 15, 16 and 17. Provides for the furnishing of duplicate receipts, fees of the county treasurer and the keeping of records in the probate court.

§§ 18 to 20. Provide for details as to records, reports and the disposition of taxes collected.

§ 21. (As amended by St. 1907, chap. 328.) The word "estate" and "property" as used in this act shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this act, and not as the property or interest therein passing or transferred to the individual legatees, devisees, heirs, next of kin, grantees, donees or vendees, and shall include all property or interest therein whether situated within or without this State and including all property represented or evidenced by note, certificate, stock, land contract, mortgage or other kind or character of evidence thereof, and regardless of whether any such evidence of property is owned, kept or possessed within or without this State. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed. The words "county treasurer," "prosecuting attorney," as used in this act shall be taken to mean the county treasurer or prosecuting attorney of the county having jurisdiction in § 10 of this act.

## MINNESOTA.

Taxes all property of nonresidents within the State including transfers of stock in domestic corporations.

TABLE OF RATES AND EXEMPTIONS.

Explanatory: Chapter 410, G. L. 1919, amends sec. 2272, G. S. 1913, fixing the rate of taxation of inheritances, devises, bequests, legacies, and gifts. The following table gives rates and exemptions. Figures opposite letter "a" are rates and exemptions in force July 1, 1911, to April 23, 1919. Figures opposite letter "b" are rates and exemptions in force on and after April 24, 1919.

Person, association, or corporation to whom transfer is made.	Exemption	Rate on excess over exemption where total amount does not exceed \$15,000	Rate on excess of \$15,000 and up to \$30,000	Rate on excess of \$30,000 and up to \$50,000	Rate on excess of \$50,000 and up to \$100,000	Rate on excess of \$100,000
Wife or lineal issue of decedent.	a. \$10,000 b. 10,000	1% 1%	1½% 2%	2% 2½%	2½% 3%	3% 4%
Husband, adopted child or lineal issue of adopted child of decedent.	a. 10,000 b. 10,000	1½% 1½%	2½% 3%	3% 3½%	3½% 4½%	4½% 6%
Lineal ancestor of decedent.	a. 3,000 b. 3,000	1½% 1½%	2½% 3%	3% 3½%	3½% 4½%	4½% 6%
Brother, sister, descendant of brother or sister; wife or widow of a son, or husband of a daughter of decedent.	a. 1,000 b. 1,000	3% 3%	4½% 6%	6% 7½%	7½% 9%	9% 12%
Brother or sister of father or mother, or descendant of a brother or sister of father or mother of decedent.	a. 250 b. 250	4% 4%	6% 8%	8% 10%	10% 12%	12% 16%
Any other degree of collateral consanguinity, or stranger in blood to decedent; or a body politic or corporate, except as below.	a. 100 b. 100	5% 5%	7½% 10%	10% 12½%	12½% 15%	15% 20%
Public hospital, academy, college, university, seminary of learning, church or institution of purely public charity within Minnesota.	a. 2,500	{ Before 5 % After 2 %	Apr. 23, 7½% Apr. 23, 3%	1919 10% 1919 4%	12½% 5%	15% 6%
Municipal corporation in Minnesota for strictly county, town or municipal purposes.	a. All					
State of Minnesota, or any political division for public purposes exclusively, or association or corporation for religious, charitable, scientific, literary or educational purposes exclusively, including encouragement of art, and prevention of cruelty to children and animals, or to a trustee or trustees exclusively for such purposes.	b. All					

LAWS OF 1911, CHAPTER 209, AS AMENDED BY LAWS 1913, CHAPTERS 455, 574 AND 565.

Section 1. A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county,



town or municipal corporation within the State, for strictly county, town or municipal purposes, in the following cases:

(1) When the transfer is by will or by the intestate laws of this State from any person dying possessed of the property while a resident of the State.

(2) When a transfer is by will or intestate law, of property within the State or within its jurisdiction and the decedent was nonresident of the State at the time of his death.

(3) When the transfer is of property made by a resident or by a non-resident when such nonresident's property is within this State, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

(4) Such tax shall be imposed when any such person or corporation become beneficially entitled, in possession or expectancy to any property or the income thereof, by any such transfer whether made before or after the passage of this act.

(5) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

§ 2. The tax so imposed shall be computed upon the true and full value in money of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

§§ 2a, b. Prescribes the rates and exemptions of the foregoing table.

§ 3. Provides that the tax accrues at death, is payable within one year, and for the valuation of life estates and remainders by the Commissioner of Insurance on mortality tables reckoned on the 5% basis.

Where property is devised in court it shall be valued as if received by the beneficiaries directly.

The section further provides:

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferee are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation, exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as if the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article, with interest thereon at the rate of 3% per annum from the time of payment. Such return of overpayment shall be made in the manner provided by § 21-c (§ 9 of this act).

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently

entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property, or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgment, defeat or diminution of said estate or property, or interest therein, as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section 21-c (section 9 of this act).

Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

The tax on any devise, bequest, legacy, gift or transfer limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof cannot be ascertained as provided for by the provisions of this act at or before the time when the taxes become due and payable as hereinbefore provided, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

§ 4. Requires executors or administrators to deduct the tax or collect it from beneficiaries to whom he may deliver property unless the tax is paid.

§ 5. Provides for payment to county treasurer who gives a receipt which must be produced to entitle executor or administrator to final accounting.

§ 6. Makes the tax a lien and executors, administrators, trustees and beneficiaries personally liable.

§ 7. If tax is not paid with one year 7% interest charged from date of death, which may be reduced to 6% in case of unavoidable delay.

§ 8. Gives power of sale to pay tax.

§ 9. Where legacy charged on real estate heir must deduct tax.

§ 10. Provides for refund of taxes erroneously paid if application made within three years.

§ 11. Provides that no transfer of stock or obligation within State by foreign executor or administrator shall be valid unless tax is paid. Such property can only be transferred on consent of Attorney-General, who gives it only when tax has been paid or no tax is due. Such application must be made on affidavits giving copy of will and full information as to nature and value of the property, and on this information he may determine the amount of the tax or that none is due. If any corporation within the State makes transfer on its books of stock owned by a nonresident decedent without the consent of the Attorney-General it is liable for the tax plus 10% to be recovered in a civil action. Any person aggrieved by the finding of the Attorney-General may appeal to the district court of Hennepin or Ramsey county from the order of which an appeal lies by either party to the supreme court.

§ 12. Forbids bond and safe deposit companies holding securities of dece-

dent to deliver same without notice to county treasurer, who may examine them and require that delivery be deferred ten days. Failure to notify treasurer makes the institution liable for the tax.

§ 13. Provides for notice to county treasurer of all probate proceedings.

§§ 13 to 19. Provide for the appointment of appraiser's valuation report and rehearing by the probate court closely following the New York practice.

§ 20. Provides for the collection of delinquent taxes by the county attorney.

§ 21. Provides for the keeping of transfer tax records by the probate court.

§ 21 (a). Provides for compromise of uncertain or contingent tax claims by the Attorney-General on consent of the State Auditor.

§ 21(b) Authorizes the Attorney-General to cite any person believed to have information concerning taxable decedent's estate to appear before him and examine such person on oath.

§ 21 (c). Provides for proceedings to secure refund of taxes erroneously paid.

§ 21 (d). Provides for the payment of taxes collected by county treasurer to the State Treasurer.

§ 21 (e and f). Provide a seal for the Attorney-General and authorize him to employ a transfer tax assistant.

### AMENDMENT OF 1919.

(CHAPTER 410, H. F. 824.)

An Act to amend Section 2272, General Statutes of 1913, fixing the rate of taxation of inheritances, devices, bequests, legacies and gifts.

*Be it enacted by the Legislature of the State of Minnesota:*

Section 1. Section 2272, General Statutes, 1913, is hereby amended to read as follows:

The tax so imposed shall be computed upon the true and full value in money of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

§ 2a. When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified and shall not exceed in value fifteen thousand dollars the tax hereby imposed shall be:

(1) Where the person entitled to any beneficial interest in such property shall be the wife, or lineal issue, at the rate of 1% of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the husband, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this State, or any child to whom decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of 1½% of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of 3% of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of 4% of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, except as hereinafter provided, at the rate of 5% of the clear value of such interest in such property.

Section 2b. The foregoing rates in section 2a are for convenience termed the primary rates.

When the amount of the clear value of such property or interest exceeds fifteen thousand dollars, the rates of tax upon such excess shall be as follows:

(1) Upon all in excess of fifteen thousand dollars and up to thirty thousand dollars, two times the primary rates.

(2) Upon all in excess of thirty thousand dollars and up to fifty thousand dollars, two and one-half times the primary rates.

(3) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, three times the primary rates.

(4) Upon all in excess of one hundred thousand dollars, four times the primary rates.

§ 2c. The following exemptions from the tax are hereby allowed: "any devise, bequest, gift, or transfer to or for the use of the State of Minnesota or for any political division thereof for public purposes exclusively, and any devise, bequest, gift, or transfer to or for the use of any corporation or association organized and operated for religious, charitable, scientific, literary or educational purposes exclusively, including the encouragement of art and the prevention of cruelty to children or animals, no part of which devise, bequest, gift or transfer, inures to the profit of any private stockholder or individual, and any bequest or transfer to a trustee or trustees exclusively for such purposes shall be exempt."

(2) Property of the clear value of ten thousand dollars transferred to the widow of the decedent (or husband of the decedent, each of the lineal issue of the decedent, or any child adopted as such in conformity with the laws of this State, or any child to whom the decedent for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child), shall be exempt.

(3) Property of the clear value of three thousand dollars transferred to each of the lineal ancestors of the decedent shall be exempt.

(4) Property of the clear value of one thousand dollars transferred to each of the persons described in the third subdivision of section two-a (2a) shall be exempt.

(5) Property of the clear value of two hundred and fifty dollars transferred to each of the persons described in the fourth subdivision of section two-a (2-a) shall be exempt.

(6) Property of the clear value of one hundred dollars transferred to each of the persons and corporations described in the fifth subdivision of section two-a (2a) shall be exempt.

§ 2. This act shall take effect and be in force from and after its passage.

[Approved April 23, 1919.]

**Recent Minnesota Cases:** State v. Chadwick et al., 157 N. W. 1077; State v. Probate Court of St. Louis County (Cutler), 162 N. W. 459; State v. Probate Court of Hennepin County (Pettit), 163 N. W. 285; State v. Probate Court of St. Louis County (Bailey), 164 N. W. 365; State v. Probate Court of Hennepin County (Linton), 166 N. W. 125; State v. Probate Court of Lyon County (Williams), 168 N. W. 14; State v. Probate Court of St. Louis County (Bodman), 172 N. W. 318; State v. Probate Court of Kandiyohi County (McIntyre), will be found in Northwestern Reporter for July, 1919; State of Iowa v. Slimer et al., and State of Minnesota, 248 U. S. 115.

**Prior Statutes:** L. 1905, ch. 288; L. 1909, Revised Statutes, sec. 1038. Other prior statutes were held unconstitutional.

## MISSISSIPPI.

Taxes tangible property of nonresidents within the State, but not stock in domestic corporations.

TABLE OF RATES AND EXEMPTIONS.

Class or Relationship	Ex-emption	Above exemption to \$25,000	\$25,000 to \$50,000	\$50,000 to \$75,000	\$75,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Grandparent, parent, husband, wife, child, brother, sister, nephew, niece, son-in-law, daughter-in-law, adopted or mutually acknowledged child, lineal descendant.	Widow, \$7,500 Child und'r 18 \$7,500 Others \$4,500	½%	1%	1½%	2%	2½%	3%
All others, except institutions exempt by law from taxation, or charitable, religious or educational or public purposes which are wholly exempt.	\$500	5%	5½%	6%	6½%	7%	8%

In addition.—½% on entire estate above \$5,000.

## CHAPTER 109, LAWS 1918.

Section 1. A tax shall be and is hereby imposed upon the net estate of every resident decedent and upon the net estate of every nonresident decedent, consisting of real estate and such corporeal, tangible personal property capable of having a situs of itself located within the State, or any interest therein, as a tax upon the right to transfer; provided, however, as to the nonresident this shall not include such intangible property as money on hand or deposit, shares of stock, bonds, notes, credits and evidences of debt. Such tax shall be imposed at the rate of one-half of 1% upon the excess value of cash said estate over five thousand dollars, provided, that in case the estate of a nonresident decedent only said proportion of said exemption of five thousand dollars shall be allowed as the value of real estate and tangible personal property located in Mississippi, or any interest therein, bears to the value of the entire estate wherever located, and, provided further, that the executor, administrator or trustees of such nonresident decedent's estate shall file with the board of tax commissioners a sworn statement showing the full and fair cash value of the entire estate. If said statement is not filed as herein provided no exemption shall be allowed.

§ 2. Provides for the ascertainment of the net value of the estate of a resident. As to a nonresident the section then provides as follows:

The value of the net estate of a nonresident decedent for the assessment of the tax imposed by section 1 of this act shall be ascertained by taking the full and fair cash value of the real estate and such corporeal tangible personal property of the decedent at the time of his decease, capable of having a situs of its own located within the State or any interest therein, including property described in paragraphs 2, 3 and 4 of section 5 of this act and deducting

therefrom such proportion of the indebtedness of the entire estate of such nonresident decedent as the value of said property and interest therein of such decedent located within this State bears to the value of the entire estate; provided, that only the excess of such proportion of indebtedness over the value of said tangible personal property shall be deducted from the appraised value of said real property, and, provided further, that the executor, administrator or trustee of such nonresident decedent's estate shall file with the State Tax Commission a sworn statement showing the full and fair cash value of the entire estate and the indebtedness of the said estate. If such statement is not filed, as herein provided, only such debts and expenses as are chargeable to said property under the laws of this State shall be deducted. The full and fair cash value of the estate of a decedent shall be determined by the State Tax Commission as aforesaid in accordance with the provisions of sections 22, 23, 24 and 31 of this act.

§ 3. Makes tax payable within thirty days after notice of amount thereof. After that interest at 8%, amount to cover the tax, may be deposited with State Treasurer before the tax is fixed and any excess thereafter refunded.

§ 4. Provides for proportionate refund in case claims are proved against an estate after the tax has been paid.

§ 5. Imposes taxes on the right to receive by will, intestate law, gifts to take effect after death and in contemplation of death, exercise of powers of appointment and testamentary trusts.

§ 6. Makes the tax a lien and the beneficiaries personally liable.

§§ 7, 8 and 9 fix the rates and exemptions shown in the foregoing tables.

The rest of the act concerns minor details and procedure and closely follows the Rhode Island statute. The tax is collected by the State Tax Commission.

## MISSOURI.

Taxes all property of nonresidents within the State, including stock in domestic corporations.

TABLE OF RATES AND EXEMPTIONS UNDER ACT OF 1917, IN EFFECT JUNE 18

CLASS OR RELATIONSHIP	Amount of exemption	Above exemption to \$20,000	\$20,000 to \$40,000	\$40,000 to \$80,000	\$80,000 to \$200,000	\$200,000 to \$400,000	In excess of \$400,000
Husband or wife.....	\$15,000	.....	.....	.....	.....	.....	.....
Lineal ancestor, lineal descendant, adopted child or its descendant illegitimate child.	\$5,000	1%	2%	3%	4%	5%	6%
Brother, sister or their descendants, son-in-law, daughter-in-law.	\$500	3%	6%	9%	12%	15%	18%
Aunt, uncle or their descendants.	\$250	3%	6%	9%	12%	15%	18%
Brother or sister of grandparents or their descendants.	\$100	4%	8%	12%	16%	20%	24%
All others except exempt charities, etc.	If less than \$100 not taxed.	5%	10%	15%	20%	25%	30%
Municipal, charitable, educational or religious purposes within the State.	All exempt.						

As to estates of decedents dying prior to June 18, 1917, the statute in force (Revised Statutes 1909) taxed transfers to collaterals and strangers only, and the table of rates and exemptions under that act follows:

Parents, husband, wife, adopted child, and direct lineal descendants.....	Exempt altogether.
Bequests for religious, charitable or religious purposes exclusively.....	Exempt altogether.
All others.....	5% on all.

## ACT OF 1917, IN EFFECT JUNE 18, 1917.

Section 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed or any interest therein or income therefrom, in trust or otherwise, to persons, institutions, associations, or corporations, not hereinafter exempted, in the following cases: When the transfer is by will or by the intestate laws of this State from any person dying possessed of the hereinafter exempted, in the following cases: When the transfer is by will or by the law of property within the State or within the jurisdiction of the State and decedent was a nonresident of the State at the time of his death. When the transfer is made by a resident or by a nonresident when such nonresident's property is within this State, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of grantor, vendor or donor, or intending to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift made within two years prior to the death of grantor, vendor, or donor, of a material part of his estate or in the nature of a final disposition or distribution thereof without an adequate valuable consideration shall be construed to have been made in

contemplation of death within the meaning of this section. Such tax shall be imposed when any person, association, institution or corporation actually comes into the possession and enjoyment of the property, interest therein, or income therefrom, whether the transfer thereof is made before or after the passage of this act; provided, that property which is actually vested in such persons or corporations before this act takes effect shall not be subject to the tax.

§ 2. Whenever any person or corporation shall exercise the power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which said appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by the donor by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power relates had succeeded thereto by a will of the donee of the power failing to exercise such power taking effect at the time of such omission or failure. The tax so imposed shall be determined by the clear market value of such property at the rate hereinafter prescribed and only upon the excess over the exemptions hereinafter made.

§§ 3 and 4. Prescribe the rates and exemptions of the foregoing table.

§ 5. Provides for the valuation of life estates and remainders and the immediate taxation of the latter unless the remainderman elects to file a bond in three times the amount of the tax with an inventory of the property and shall renew the same every five years.

§ 6. Makes tax due at death, no interest for six months, after that 6% from date of death. If not paid in one year executor or administrator must file a bond. Requires the executor to deduct the tax from a money legacy or if in property to collect it from the beneficiary, and forbids delivery without payment of the tax.

It imposes the same duty on the heir when a legacy is charged on the real estate, makes it a lien, and provides for its enforcement in the same manner as the legacy.

§ 7. Makes executors and administrators personally liable and gives them power of sale in the same manner as to pay debts.

§ 8. Provides for receipts which must be produced to entitle the executor or administrator to final accounting.

§ 9. Taxes bequests to executors in lieu of commissions when in excess of reasonable compensation.

§ 10. Provides for a proportionate refund when debts have been proved against the estate after distribution.

§ 11. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligation in this State standing in the name of the decedent or in trust for a decedent liable for any such tax, the tax shall be paid to the State Treasurer on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who is a resident or nonresident, or belonging to or standing in the joint names of such a decedent and one or more persons, including the shares of capital stock or other interest in a safe deposit company, trust company, corporation, bank or other institution making a delivery or transfer herein provided, shall deliver or transfer the same to the executor, administrator, or legal representatives of said decedent or the survivor or survivors when in the joint name of a decedent and one or more persons or upon their order or request unless notice of the time and place of such intended delivery or transfer be served upon the State Treasurer and Attorney-General at least ten days prior to said delivery or transfer; nor



shall any safe deposit company, trust company, corporation, bank or other institution, person or persons, deliver or transfer any securities, deposits, or other assets belonging to or standing in the name of decedent or belonging to or standing in the joint names of a decedent and one or more persons, including the shares of capital stock of or any other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits, or other assets, including the shares of capital stock or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer under the provisions of this article unless the State Treasurer and the Attorney-General consent thereto in writing. And it shall be lawful for the State Treasurer, together with the Attorney-General, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax or interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits, or other assets, including the charges of capital stock of, or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto a penalty of one thousand dollars; and the payment of such tax and interest thereon or the penalty above prescribed or both may be enforced in an action brought by the State Treasurer in any court of competent jurisdiction.

§ 12. Provides for refunds of taxes erroneously paid when the application is made within two years of such payment.

§ 13. Gives the probate court granting letters jurisdiction of the tax proceedings and for the appointment of an appraiser by the judge on his own motion or on the application of the estate or State officers.

§§ 14 to 23. Provide for proceedings before appraisers, appeals and proceedings to fix the tax where no administration proceedings are pending, and for the valuation of life estates and remainders by the Superintendent of Insurance on the 5% basis, using actuaries' combined experience tables of mortality.

§ 24. In determining the value of any estate, property, interest therein or income therefrom to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled, no allowance shall be made on account of any contingent encumbrance thereon, nor on account of any contingency upon the happening of which the estate, property, interest or income or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the persons properly entitled thereto of a proportionate part of such tax on account of the encumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section 12 thereof upon order of the court having jurisdiction.

§ 25. Where any property shall after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estate or interests is derived. When the property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are wholly

dependable upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executor, administrator, or trustee out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act. Such return of overpayment shall be made in the manner provided by section 12 of this act, upon the order of the court having jurisdiction. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estate for purposes of taxation, upon which said estates in expectancy may have been limited. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

§ 26. Actions may be brought against the State for the purpose of quieting the title to any property, against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes under this act. In any such action, the plaintiffs may be any administrator, or executor of the estate or will of any decedent whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee, devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of any such decedent, and any assignee, grantee or successor in interest of any such persons, and all or any other persons who might be made parties defendant in any action brought by the State under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise parted with all or any interest in or title to the property, or any part thereof, involved in any such claim or lien before the commencement of such act. All or any of the persons in this action enumerated may be joined or united as parties plaintiff. The enumeration in this section of the parties who may be made parties shall not be deemed to be exclusive, but the joinder or non-joinder of parties except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant. All actions under this section shall be commenced in the Circuit Court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the Circuit Court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein. Service of summons in the actions brought against the State shall be made on the State Treasurer and the prosecuting attorney of the county, and it shall be the duty of said prosecuting attorney to defend for the State. The procedure and practice in all actions brought under this section, except as otherwise provided in this act, shall be governed by the provisions of the Code of Civil Procedure in relation to civil actions, so far as the same shall or may be applicable, including all provisions relating to motions for new trials and appeals. The remedies provided in this section shall be in addition to and not exclusive of any remedies provided in the sections preceding this section.

§§ 27, 28 and 29. Provide for reports by State officers and impose a penalty for neglect of duty in failing to enforce the statute.

§ 30. When any property, benefit or income shall pass to or for the use of any hospital, religious, educational, Bible, missionary, scientific, benevolent or charitable purpose in this State, or to any trustee, association or corporation, bishop, minister of any church, or religious denomination in this State, to be held and used and actually held and used exclusively for religious, educational or charitable uses and purposes, the same shall not be subject to any tax, but this provision shall not apply to any corporation which has a right to make dividends or distribute profits or assets among its members, except when the property is transferred to any of the above named parties in the first instance; the intent being to exclude and exempt from the tax herein provided for, all property held by any person or persons as the trustee or other legal representative of any religious, charitable, scientific, or educational institutions, society or corporation, when by death the title to property passes by the right of succession to other persons as trustee or legal representatives of such institutions, societies or corporations.

§ 31. When property or any interest therein or income therefrom shall pass to or for the use of any person, institution, association or corporation by the death of another by deed, instrument or memoranda or by any transfer or passage whatsoever and such transfer shall be deemed a transfer within the meaning of this act and taxable at the same rates and be appraised in the same manner and subjected to the same duties and liabilities as any other form of transfer provided in this act.

§ 32. Makes the usual definitions as to estate and property.

§ 33. Repeals the former statutes with the usual saving clause as to the rights of the State to taxes already accrued.

#### AMENDMENT OF 1919, IN EFFECT NOV. 1, 1919, AS TO EXEMPTIONS.

The Legislature of 1919 amended sections 4 and 30 of the 1917 act to read as follows:

§ 4. The following shall be exempt from taxes provided for in this act:— All transfers of property or any beneficial interest therein to be used, and actually used solely for county, city, town or municipal purposes, or for religious, charitable, or educational purposes in this State whether such transfer be made directly or indirectly and said property shall be exempt from the tax where the same descends from a trustee or trustees to other trustee or trustees who hold property for the uses of the above named institutions. All transfers of property or any beneficial interest therein of the clear market value of fifteen thousand dollars to the surviving husband or wife, and five thousand dollars to each of the other persons described in the first subdivision section 3 of this act. All transfers of property or any beneficial interest therein of the clear market value of five hundred dollars to each of the persons described in the second subdivision of section 3 of this act. All transfers of property or any beneficial interest therein of the clear market value of two hundred and fifty dollars to each of the persons described in the third subdivision of section 3 of this act. All transfers of property or any beneficial interest therein of the clear market value of one hundred dollars to each of the persons described in the fourth subdivision of section 3 of this act. All transfers of property of any beneficial interest therein of which the clear market value shall be less than one hundred dollars shall not be subject to any tax.

§ 30. When any property, benefit or income shall pass to or for the use of any hospital, religious, educational, Bible, missionary, scientific, benevolent or charitable purpose in this State, or to any trustee, association or corporation, bishop, minister of any church, or religious denomination in this State, to be held and used and actually held and used exclusively for religious, educational, or charitable uses and purposes, whether such transfer be made directly or indirectly, the same shall not be subject to any tax, but this provision shall not apply to any corporation which has a right to make dividends or distribute profits or assets among its members.

# **FORMS FOR WAIVER AND CONSENT TO TRANSFER NONRESIDENT ASSETS.**

## **TRANSFER LAW.**

Laws of Missouri, 1917, Page 114.

### **NOTICE OF INTENTION TO DELIVER OR TRANSFER SECURITIES OR OTHER ASSETS.**

HON. GEORGE H. MIDDLEKAMP,  
Treasurer of Missouri,

and

HON. FRANK W. McALLISTER,  
Attorney-General of Missouri,  
Jefferson City, Missouri.

Pursuant to Section 11 of an Act Providing for a Tax on the transfer of Property by Gift, Inheritance, etc., Approved April 12, 1917, Laws of Missouri, 1917, Page 114, you and each of you are hereby notified that the undersigned will on the ..... day of ....., 19..., at .....,

(Place of Business)

(Street or Building Number)

....., all securities, deposits, assets, and other evidences of property in ..... possession or under ..... control, including contents of Safe Deposit Box No. ...., belonging to or standing in the name of ....., deceased (and .....), a ..... resident of ..... County, State of ....., who is said to have died at ....., on or about the ..... day of ....., 19..., at which said time and place of delivery you and each of you or your respective representatives may attend, if you so desire.

Dated this ..... day of ....., 19...

.....

## **STATE OF MISSOURI.**

### **TRANSFER AND INHERITANCE TAX.**

#### **NONRESIDENT DECEDENT.**

IN THE MATTER OF THE ESTATE OF

..... }  
Deceased. }

Late of ....., State of .....

### **CONSENT TO TRANSFER OR DELIVER ASSETS.**

To.....  
.....

We, the undersigned, George H. Middelkamp, Treasurer of the State of Missouri, and Frank W. McAllister, Attorney-General of the State of Missouri, hereby consent to the transfer, payment or delivery to the duly appointed and acting administrat..... or execut..... of the Estate of ....., Deceased, who died on the ..... day of ....., 19..., a resident of the State of ....., or to the order of such administrat..... or execut..... of the following described personal property, which said property appears to be in possession, under control, or on the books of said ..... in the name of said ....., Deceased:

No. of Shares or Items.	Description.
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

We hereby release said ..... from any and all liability to the State of Missouri for the tax and penalties imposed by the Transfer and Inheritance Tax Laws thereof by reason of said transfer, payment or delivery.

Dated this ..... day of ....., 19...

.....  
Treasurer State of Missouri.

By.....

.....  
Attorney-General State of Missouri.

By.....

### MONTANA.

Taxes property of nonresidents within the State except real estate of lineal descendants, and near relatives. Taxes nonresident stock in domestic corporations, but allows proportionate deduction of debts due in Montana.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Exemption	Rate of tax
Father, mother, husband, wife, lawful issue, sister, brother, son-in-law, daughter-in-law, adopted or mutually acknowledged child, lineal descendants, born in wedlock.	Estate valued at less than \$7,500, no tax.	1% on entire value of personal property, if over \$7,500 in value.
All others.....	Estate valued at less than \$500, not taxed.	5% on all, if estate over \$500.

### REVISED CODES OF MONTANA OF 1907, AS AMENDED BY CHAPTER 40, LAWS OF 1917.

§ 7724. After the passage of this act, all property which shall pass by will or by the intestate laws of this State, from any person who may die, seized or possessed of the same, while a resident of this State, or if such decedent was not a resident of this State, at the time of his death, which property or any part thereof, shall be within this State, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death to any person or persons, or to any body politic corporate, in trust or otherwise, or any property, which shall be in this State or the proceeds of all property outside of this State, which may come into this State, and which may be or should be distributed in this State to any such heirs, devisees or legatees, by reason whereof any person or corporation shall become beneficially entitled in possession or expectancy, to any such property, or to the income thereof.

The section then fixes the rates and exemptions shown above, makes executors and administrators personally liable until the tax is paid, and concludes as follows:

"Provided, further, that said tax shall be levied and collected upon the increase of all property arising between the date of death and the date of the decree of distribution, and upon all estates which have been probated before, and shall be distributed after the passage and taking effect of this act."

**Note:** (a) A serious typographical error which has misled text writers is corrected in a re-publication of above section in Montana Revised Codes of 1915, Vol. 3, p. 781.

(b) The unique provision taxing increase during administration is construed to include increase in value as well as in kind.

Matter of Tuohy, 35 Mont. 431.

§ 7725. Provides that if remaindermen elect to defer payment until they get the property they may within one year file a bond in twice the amount of the tax with an inventory of the property to pay it with interest at 10%, and must renew the bond every three years.

§ 7726. Taxes excess over reasonable fees of bequest to executors in lieu of commissions.

§ 7727. Makes taxes due at death. If paid within six months allows discount of 3%. Charges interest at 10% after ten months, and requires executors or administrators to file a bond for payment.

§ 7728. In case of unavoidable delay no interest for eighteen months and then at 7%.

§ 7729. Requires the executor or administrator to deduct the tax from money legacy or collect it from the legatee; must not deliver property unless the tax is paid.

§ 7730. Gives power of sale to pay tax as in case of debts.

§ 7731. Provides for receipts which must be produced on accounting to procure discharge.

§ 7732. Makes the bond of executors or administrators liable for the tax.

§ 7733. Executor or administrator may be removed and his bond held in case of failure to pay tax.

§ 7734. Makes administrators *de bonis non* liable in the same way as other administrators.

§ 7735. Provides for proportionate refund where debts have been proved after distribution.

§ 7737. Foreign executors. Tax on stocks or loans. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State, standing in the name of the decedent, or held in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the treasurer of the proper county on the transfer thereof; otherwise, the corporation permitting such transfer shall become liable to pay such tax; provided that such corporation had actual or constructive knowledge before such transfer that said stocks or loans are liable to said tax.

The other sections provide for the appraisal of the estate, appeal, rehearing and delinquent collections, substantially following the New York practice.

Life estates and remainders are computed on mortality tables on a basis of 7%.

### THE 1917 AMENDMENT.

Chapter 40, L. 1917, reads as follows:

"§ 7731. Every sum of money retained by an executor, administrator, or trustee, or paid into his hands for any tax on property shall be placed in a separate account and within ten days thereafter, he shall obtain an order of the court before whom the probate proceedings are pending, setting forth the county whereof decedent was a resident at the time of his death and showing the county or counties wherein the real property of decedent is situated, together with the amount thereof and the value of the same, as given by the appraisers of decedent's estate, and ordering such executor, administrator, or trustee, to pay unto the several county treasurers of such county or counties such sum or sums so set aside in the following proportion:

"First. To the county treasurer of the county whereof decedent was a resident at the time of his death the whole amount of the tax due on the personal property of said decedent.

"Second. To each county treasurer of the counties wherein decedent owned real property, the tax due on the amount of property situate in such county according to the valuation set upon the same by the appraisers of decedent's estate; immediately after obtaining the aforesaid order such executor, administrator, or trustee shall pay to the county treasurer or treasurers named therein the sum or sums specified in such order, and the payment of said tax to every county treasurer shall be accompanied by a certified copy of such order, and the said county treasurer or treasurers shall give, and every executor, administrator, or trustee shall take duplicate receipts for such payment, one of which said receipts said executor, administrator or trustee shall immediately send to the treasurer of the State whose duty it shall be to charge the county treasurer so receiving the tax with the amount thereof due the State, and State Treasurer shall seal said receipt with the seal of his office, if he have one, and countersign the same, and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed unless he shall produce a receipt so sealed and countersigned by the State Treasurer, or a copy thereof certified by him."

§ 2. This act shall apply to all estates remaining undistributed at the time this law shall take effect and the tax shall be determined and collected as in other cases.

§ 3. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, as far as they affect the provisions hereof.

§ 4. This act shall take effect and be in force from and after its passage and approval by the Governor.

## NEBRASKA.

Taxes property of nonresidents within the State. But this is construed not to include transfers of stock in domestic corporations.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount exempt	Rates				
Father, mother, husband, wife, child, brother, sister, daughter-in-law, son-in-law, adopted or mutually acknowledged child, lineal descendant.	\$10,000	1% on all above exemption.				
Aunt, uncle, niece, nephew, or their lineal descendants.	\$2,000	2% on all in excess of exemption.				
All others.....	Less than \$500, no tax	On all up to \$5,000	\$5,000 to \$10,000	\$10,000 to \$20,000	\$20,000 to \$50,000	In excess of \$50,000
		2%	3%	4%	5%	6%

## REVISED STATUTES OF 1913, AS AMENDED BY CHAPTER 113, LAWS OF 1915.

§ 6622. All property, real, personal and mixed which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, or, if decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor, or bargainor, or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic

or corporate in trust or otherwise, or by reason thereof any person or body corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is subject to a tax, at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the State and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed.

The rest of the section prescribes the rates and exemptions as shown in the foregoing table.

§ 6624. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of 7% per annum shall be charged and collected therefrom for such time as such taxes are not paid; provided, that if said tax is paid within one year from the accruing thereof, interest shall not be charged or collected thereon, and in all cases where the executors and administrators or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond in the form and to the effect prescribed in section 2 of this act, for the payment of said tax together with interest.

§ 6625. Requires the executor or administrator to deduct the tax from money or collect it from beneficiary in case of property, which must not be delivered unless the tax is paid. Requires the heir to deduct the tax before paying a legacy charged on real estate. When property is given for a limited period the court apportions the tax.

§ 6626. Gives power of sale for payment of tax in the same way as in case of debts.

§ 6627. Provides for receipts which must be produced on final accounting.

§ 6628. Whenever any of the real estate of which any decedent may die seized shall pass to any body corporate or to any person or persons or in trust for them or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof, in writing, to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the facts be not known within that period, then within one month after the same shall have come to their knowledge.

§ 6629. Whenever debts shall be proved against the estate of the deceased after distribution of legacies from which the inheritance tax had been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be paid to him by the executor or administrator; if the said tax has not been paid into the county treasury or by the county treasurer if it has been so paid.

§ 6630. Whenever any foreign executors or administrators shall assign or transfer any stocks or loans in this State standing in the name of the decedent, or in trust for a decedent which shall be liable to the said tax, such tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise the corporation making such transfer shall become liable to pay such taxes, provided that such corporation has knowledge before such transfer that said stocks or loans are liable for such taxes.

§ 6631. When any amount of the said tax shall have been paid erroneously to the county treasurer it shall be lawful for him, on satisfactory proof rendered to him of said erroneous payment, to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error, the amount of such tax so paid provided that all applications for the repayment of the said tax shall be made within two years of the date of said payment.

The rest of the statute, sections 6632 to 6641, makes the usual provisions for appointment of appraisers, valuation, appeal and reports of State officers.

Under the 1915 amendment to section 6632 the county court is empowered to make an order on proper proof that the estate is not subject to any tax, thus avoiding unnecessary appraisal of small estates, following the New York practice.

**Prior Statutes:** L. 1901, ch. 54; L. 1905, ch. 117; L. 1907, chs. 103 and 104, L. 1911, ch. 107.



## NEVADA.

Taxes all property of nonresidents within the State.

TABLE OF GRADED RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates				
		Above exemption up to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child or its lineal issue.	\$20,000 to widow or minor child; others, \$10,000.	1%	2%	3%	4%	5%
Brother or sister of decedent and their descendants, son-in-law, daughter-in-law.	\$10,000	2%	4%	6%	8%	10%
Aunt or uncle of their descendants.	\$5,000	3%	6%	9%	12%	15%
Brother or sister of grandparents and their descendants.	None	4%	8%	12%	16%	20%
All others . . . . .	None	5%	10%	15%	20%	25%

## LAWS OF 1913, CHAPTER 266, BECAME A LAW MARCH 26, 1913.

Section 1. A tax shall be and is hereby imposed upon the transfer of any and all property within the jurisdiction of this State, and any interest therein or income therefrom, whether belonging to the inhabitants of this State or not, and whether tangible or intangible, not hereinafter exempted, which shall pass in trust or otherwise by will or by the statutes of inheritance of this or any other State or by deed, grant, sale or gift made without valuable and adequate consideration in contemplation of the death of the grantor, vendor, assignor or donor or intended to take effect in possession or enjoyment at or after such death, as specified in this act. For the purposes of this act, the ownership of shares of stock in a corporation owning property in this State shall be considered as the ownership of such interest in the property so owned by such corporation, as the number of shares so owned shall bear to the entire issued and outstanding capital stock of such corporation; and notes and other evidences of indebtedness secured by mortgage on real estate situated in this State are and shall be, upon the owner's death, subject to the inheritance tax hereinafter provided.

§§ 2, 3 and 4. Impose the rates and exemptions shown in the foregoing table.

§ 5. Provides that remaindermen may elect not to pay the tax until they get the property by filing an inventory and bond within one year in twice the amount of the tax and renewing the bond every five years.

§ 6. Taxes bequests to executors in lieu of commissions when in excess of reasonable compensation.

§ 7. Makes all taxes due at death. If paid within six months allows discount of 5%. No interest until after eighteen months, then 10% from date of death, and executor or administrator must file a bond.

§ 8. In case of unavoidable delay interest after eighteen months reduced to 7%.

§ 9. Requires the executor or administrator to collect the tax from beneficiary or deduct it from money legacy or share.

§ 10. Gives power of sale to pay the tax and no final accounting allowed unless tax receipt is produced.

§ 11. Requires the executor or administrator to pay the tax, provides for receipts and duplicate copies thereof.

§ 12. Provides for proportionate refund of tax if debts are proved against estate after distribution.

§ 13. Gives jurisdiction of the tax proceedings to the district court in which the probate is pending.

§§ 14 to 23. Provide for the appointment of appraisers and the usual proceedings for the valuation of the estate and collection of the tax closely following the New York practice.

§ 24. Whenever any property belonging to a foreign estate which estate, in whole or in part, is liable to pay an inheritance tax in this State, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this State; in the event that the executor, administrator or trustee of such foreign estate, files with the clerk of the court having ancillary jurisdiction, and with the State Treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this State bears to the value of the entire estate.

§ 25. If a foreign administrator, executor or trustee shall assign or transfer any corporate stock or obligations in this State standing in the name of the decedent, or in trust for a decedent and liable to the tax herein provided, the tax must be paid to the county treasurer of the county in which such transfer is made before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, and it is the duty of the State Controller and the district attorney of the proper county to enforce the payment thereof.

§§ 26-29. Provide for the collection of delinquent taxes.

§ 30. The words "estate" and "property," as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the State. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor.

The words "contemplation of death" as used in this act shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in nowise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person in making a gift *causa mortis*, and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of the property transferred by testate or intestate laws.

§ 31. This act shall take effect thirty days from and after the date of its approval.

**Prior Statutes:** None prior to above act.

## NEW HAMPSHIRE.

Prior to March 12, 1919, taxed only collaterals.

Except as to estates of persons dying between March 8, 1905, and April 7, 1915, taxes only real estate of nonresident decedents situated within the State.

TABLE OF RATES AND EXEMPTIONS PRIOR TO MARCH 12, 1919.

CLASS OR RELATIONSHIP	Amount exempt	Rates
Father, mother, husband, wife, brother, sister, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter, of a decedent, or to or for the use of educational, religious, cemetery, or other institution, societies, or associations of public charity in this state, or for or upon trust for any charitable purpose in the state, or for the care of cemetery lots, or to a city or town in this state for public purposes.	Wholly exempt.....	No tax.
All others when nonresidents.....	On real estate within the State.....	5%
All others when residents.....	5% on all.	

RATE OF SUCCESSION TAX UNDER CHAPTER 37, LAWS OF 1919. IN EFFECT UPON THE ESTATES OF PERSONS DYING ON OR AFTER MARCH 12, 1919

Beneficiary	Value of Share					
	\$10,000 or under	In excess of \$10,000 to \$25,000	In excess of \$25,000 to \$50,000	In excess of \$50,000 to \$100,000	In excess of \$100,000 to \$250,000	In excess of \$250,000
Class A. Educational, religious, cemetery, or other institutions, societies or associations of public charity in N. H., or for or upon trust for any charitable purpose in N. H., or for the care of cemetery lots, or to a city or town in N. H. for public purposes.	No tax	No tax	No tax	No tax	No tax	No tax
Class B. Husband, wife.....	No tax	1%	2%	2½%	3%	5%
Class C. Father, mother, lineal descendant, adopted child, lineal descendant of adopted child, wife or widow of a son, husband of a daughter.						
(1) If under 21.....	No tax	1%	2%	2½%	3%	5%
(2) 21 or over .....	1%	1%	2%	2½%	3%	5%
Class D. All others.....	5%	5%	5%	5%	5%	5%

**LAWS OF 1905, CHAPTER 40, AS AMENDED BY LAWS OF 1907, CHAPTER 68; LAWS OF 1911, CHAPTER 42; LAWS OF 1913, CHAPTER 202; LAWS OF 1915, CHAPTER 106 AND CHAPTER 116, AND CHAPTER 37, LAWS OF 1919.**

Section 1. All property within the jurisdiction of the State, real or personal, and any interest therein, belonging to inhabitants of the State, and all real estate within the State, or any interest therein, belonging to persons who are

not inhabitants of the State, which shall pass by will, or by the laws regulating intestate succession, or by deed, grant, bargain, sale, or gift, made in contemplation of death, or made or intended to take effect in possession or enjoyment at or after the death of the grantor or donor, absolutely or in trust, to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter, of a decedent, shall be subject to a tax, for the use of the State, of 1% of its value up to \$25,000; of 2% of its value in excess of \$25,000 up to \$50,000; of 2½% of its value in excess of \$50,000 up to \$100,000; of 3% of its value in excess of \$100,000 up to \$250,000; and of 5% of its value in excess of \$250,000; but no bequest, devise or distributive share of an estate which shall so pass to or for the use of a husband, wife or of any such person who is under 21 years of age at the time of the decedent's death shall be subject to such tax, except upon its value in excess of \$10,000; and all such property which shall so pass to or for the use of any other person, except educational, religious, cemetery, or other institutions, societies or associations of public charity in this State, or for or upon trust for any charitable purpose in the State, or for the care of cemetery lots or to a city or town in this State for public purposes, shall be subject to a tax of 5% of its value, for the use of the State; and administrators, executors, trustees and any such grantees under a conveyance made during the grantor's life, shall be liable for such taxes, with interest, until the same have been paid. An institution or society shall be deemed to be in this State, within the meaning of this act, when its sole object and purpose is to carry on charitable, religious, or educational work within the State, but not otherwise. [As amended by chap. 37, L. 1919.]

§ 2. When any interest in property less than an estate in fee shall pass by will, or otherwise, as set forth in section 1, to one or more beneficiaries, with remainder to others, the several interests of such beneficiaries, except as they may be entitled to exemption under the provisions of section 1, shall be subject to said tax. The value of an annuity or life estate shall be determined by the actuaries' combined experience tables at 4% compound interest, and the value of any intermediate estate less than a fee shall be so determined whenever possible. The value of a remainder after such estate shall be determined by subtracting the value of the intermediate estate from the total value of the bequest or devise. Whenever such intermediate estate or remainder is conditioned upon the happening of a contingency, or dependent upon the exercise of a discretion, so that the value of either cannot be determined by the tables as hereinbefore provided, the value of the property which is the subject of the bequest shall be determined as provided in section 13, and such value having thus been ascertained the State Treasurer shall, upon such evidence as may be furnished by the will and the executor's statement or by the beneficiaries or otherwise, determine the value of the interests of the several beneficiaries, and the values thus determined shall be deemed to be the values of such several interests for the purpose of the assessment of the tax except in so far as they shall be changed by the court upon appeal. The executor or any beneficiary aggrieved by such determination of the value of any such interest by the State Treasurer may at any time within three months after notice thereof appeal therefrom to the probate court having jurisdiction of the estate of the decedent, which court shall determine such value subject to appeal as in other cases. Whenever the identity of the beneficiary who is to take such a remainder is conditioned upon the happening of a contingency, or dependent upon the exercise of a discretion the State Treasurer shall assess and collect the tax upon such remainder at the highest rate and amount, which, on the happening of any of the said contingencies or conditions, or by the exercise of such discretion, would be possible under the provisions of section 1, and the executor shall be liable for such tax as in other cases. *Provided, however*, that if at the termination of the intermediate estate such remainder or any portion thereof shall pass to a person or corporation which at the time of the death of the decedent was exempt from such tax, such person or corporation may at any time within one year after the termination of the intermediate estate, but not

afterwards, apply to the probate court for an abatement of the tax on such remainder as provided in section 12, and the State Treasurer shall repay the amount adjudged to have been illegally exacted as provided in said section 12 with interest thereon at 3% per annum from the date of the payment of the tax. *Provided, however,* that the power of the State Treasurer, with the approval of the Attorney-General, to adjust the tax by compromise in certain cases, as set forth in chapter 69 of the Laws of 1907, shall remain in force. [As amended by chap. 37, L. 1919.]

§ 3. Taxes bequests to executors in lieu of commissions in excess of reasonable compensation.

§ 4. Makes taxes due two years from giving bonds by executors or administrators, after that 10%, and tax is made a lien on the property until paid.

§ 5. Requires executors or administrators to deduct the tax or collect it from beneficiaries and gives them power of sale.

The section provides further:

When a conveyance made by a decedent in his lifetime is subject to said tax, and the property thus conveyed, being personal property is without the State, or is removed from the State before the tax is paid, such tax shall become a lien upon all the property of the decedent and shall be chargeable as an expense of administration; and the executor or administrator shall collect taxes due on account of such conveyance and may be authorized to sell any property subject to the lien of such tax, for the payment thereof, as in other cases.

§ 6. Requires the heir to deduct the tax before paying legacy charged on real estate, makes the tax a lien until paid and payment may be enforced in the same way as payment of the legacy.

§§ 7, 8. Give power of sale of property and real estate to pay the tax if not paid by beneficiaries when due.

§ 9. Every administrator shall prepare a statement in duplicate, showing as far as can be ascertained the names of all the heirs-at-law, and every executor shall prepare a like statement showing the names of all legatees named in the will or entitled to take thereunder and stating whether or not the same were living at the time of the decedent's death, which said statements shall also show the relationship to the decedent of all heirs-at-law or legatees, and the age at the time of the death of the decedent, of all legatees to whom property is bequeathed or devised for life or for a term of years or subject to a contingency or the exercise of a discretion and of all other heirs or legatees except collateral relatives and persons not related to the decedent, and shall file the same with the register of probate at the time of his appointment. Letters of administration shall not be issued by the probate court to any executor or administrator until he has filed such statement in duplicate and has given bond to the judge of probate with sufficient sureties containing, in addition to the other conditions required by law, a condition in terms as follows, viz., that he shall "pay all taxes for which he may be or become liable under the provisions of chapter 40 of the Laws of 1905 of the State of New Hampshire relating to a tax on legacies and successions and all amendments thereto, and comply with all the provisions of said laws." An inventory and appraisal under oath of every estate, in the form prescribed by the statute, shall be filed in probate court by the executor, administrator or trustee within three months after his appointment. If he neglects or refuses to comply with any of the requirements of this section he shall be liable to a penalty of not more than one thousand dollars, which shall be recovered by the State Treasurer for the use of the State, and after hearing and such notice as the court of probate may require, the said court of probate may remove said executor or administrator, and appoint another person administrator with the will annexed, or administrator, as the case may be; and the register of probate shall notify the State Treasurer within thirty days after the expiration of said three months of the failure of any executor, administrator or trustee to file such inventory and appraisal in his office. [As amended by chap. 37, L. 1919.]

§ 10. The register of probate shall, within thirty days after it is filed, send to the State Treasurer, by mail, one copy of every statement filed with him by

executors and administrators as provided in section 9, a copy of every will admitted to probate, and a copy of the inventory and appraisal of every estate, and he shall in like manner send to the State Treasurer a copy of every account of an executor or administrator within seven days after it is filed, unless notified by the State Treasurer that such copies will not be required. The fees for such copies shall be paid by the State Treasurer. The register of probate shall also furnish such copies of papers and such information as to the records and files in his office, in such form, as the State Treasurer may require. A refusal or neglect by the register so to send such copies or to furnish such information shall be a breach of his official bond. The fees of registers of probate for copies furnished under the provisions of this section shall be one dollar for each will, inventory or account not exceeding four full typewritten pages, eight by ten and one-half inches, and twenty-five cents for each page in excess of four. [As amended by chap. 37, L. 1919.]

§ 11. Requires the executor or administrator to notify the State Treasurer of any real estate passing so as to be liable to the tax.

§ 12. Requires the State Treasurer to determine the amount of the tax and provides further: The amount due upon the claim of any creditor against the estate of a deceased person arising under a contract made after the passage of this act, if payable by the terms of such contract at or after the death of the deceased shall be subject to the same tax imposed by this chapter upon a legacy of like amount. The value of legacies or distributive shares in the estates of deceased persons for the purpose of the legacy or succession tax shall not be diminished by reason of any claim against the estate based upon such a contract in favor of the persons entitled to such legacies or distributive shares, except in so far as it may be shown affirmatively by competent evidence that such claim was legally due and payable in the lifetime of the decedent. Payment of the amount so certified shall be a discharge of the tax. An executor, administrator, trustee or grantee, who is aggrieved by any such determination of the State Treasurer and who pays the tax assessed without appeal, may, within one year after the payment of such tax to the Treasurer, but not afterwards, apply to the probate court having jurisdiction of the estate of the decedent for the abatement of said tax or any part thereof, and if the court adjudges that said tax or any part thereof was wrongfully exacted it shall order an abatement of such portion of said tax as was assessed without authority of law, which said order or decree shall be subject to appeal as in other cases. Upon a final decision ordering an abatement of any portion of said tax, the State Treasurer shall repay the amount adjudged to have been illegally exacted without any further act or resolve making appropriation therefor. Whenever a specific bequest of household furniture, wearing apparel, personal ornaments, or similar articles of small value is subject to a tax under the provisions of this act, the State Treasurer in his discretion may abate such tax if in his opinion the tax is not of sufficient amount to justify the labor and expense of its collection.

§ 13. Provides for the appointment of appraisers by State Treasurer if the estate fails to make one or he is dissatisfied with that made, for reappraisal on application to the probate court and for appeal.

§ 14. Gives right of appeal to the probate court to the executor or administrator if dissatisfied with finding of the State Treasurer.

§ 15. The State Treasurer may apply for administration of an estate liable to tax if no proceedings for probate or administration are begun within four months of death.

§ 16. Executor or administrator must show that the tax has been paid or that none is due before being entitled to final accounting.

§ 17. Authorizes the State Treasurer to require the production of books and papers.

§ 18. When real estate within the State, or any interest therein, belonging to a person who is not an inhabitant of the State, shall pass by will or otherwise so that it may be subject to tax under the provisions of section 1, and an executor or administrator of the estate of said decedent is appointed by a probate court of this State upon ancillary proceedings, or otherwise, such

executor or administrator shall, for the purposes of this act, have the same powers and be subject to the same duties and liabilities with reference to such real estate as though the decedent had been a resident of this State; but the provisions of this act, in so far as they refer to personal property, shall not apply to such executor or administrator.

§ 19. In the absence of administration in this State upon the estate of a nonresident, the State Treasurer may, at the request of an executor or administrator duly appointed and qualified in the State of the decedent's domicile, or of a grantee under a conveyance made during the grantor's lifetime, and upon satisfactory evidence furnished him by such executor, administrator, or grantee, or otherwise, determine whether or not any real estate of said decedent within this State is subject to tax under the provisions of this act, and if so, may determine the amount of such tax and adjust the same with such executor, administrator, or grantee, and for that purpose may appoint an appraiser to appraise said property as provided in section 13, and the expense of such appraisal shall be a charge upon said real estate in addition to the tax. The Treasurer's certificate as to the amount of such tax and his receipt for the amount therein certified may be filed in the probate office in the county where the real estate is located, and when so filed shall be conclusive evidence of the payment of the tax, to the extent of such certification, as provided in section 16. Whenever in such a case the tax is not adjusted within four months after the death of the decedent, the proper probate court, upon application of the State Treasurer, shall appoint an administrator in this State as provided in section 15.

§ 20. The State Treasurer shall be entitled to appear in any proceeding in any court in which the decree may in any way affect the tax; and no decree in any such proceeding, or upon appeal therefrom, shall be binding upon the State unless personal notice of such proceeding shall have been given to the State Treasurer.

§ 21. Requires books and blanks to be furnished by the State Treasurer.

#### DIGEST OF NEW HAMPSHIRE AUTHORITIES.

Holds the collateral inheritance tax of 1905 constitutional. *Thompson v. Kidder*, 74 N. H. 89.

Where a statute is copied construction by courts of State originally passing the act applicable. *Mann v. Carter*, 74 N. H. 345.

Statute in force at date of death controls tax, amendments not retroactive. *Carter v. Whitcomb*, 74 N. H. 482.

Shares of stock in domestic corporations held by nonresident decedents taxable under act of 1905. *Gardner v. Carter*, 74 N. H. 507.

Taxes paid in another State a deduction as an expense of administration. *Kingsbury v. Bazeley*, 75 N. H. 13.

Religious corporations exempt. *Carter v. Eaton*, 75 N. H. 560; *Carter v. Story*, 76 N. H. 34.

Conveyances intended to take effect at death taxable. *Carter v. Craig*, 77 N. H. 200.

Intangible assets have the situs of the owner's domicile notwithstanding physical presence within the State. *Crosby v. Charlestown*, 78 N. H. 39.

Facts and law considered as to change of domicile. *Kerby v. Charlestown*, 78 N. H. 301.

Federal tax charged pro rata to each beneficiary in the absence of testamentary provision to the contrary. *Fuller v. Gale*, 78 N. H. 544.

## NEW JERSEY.

As to nonresidents, taxes real property, goods, wares and merchandise within the State, stock in New Jersey corporations, and of national banking associations, located within the State.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	In excess of \$5,000 to \$50,000	\$50,000 to \$150,000	\$150,000 to \$250,000	In excess of \$250,000
Husband, wife, child, lineal issue, adopted or mutually acknowledged child and its issue.	\$5,000	1%	1½%	2%	3%
Father, mother, brother, sister, daughter-in-law, son-in-law.	\$5,000	2%	2½%	3%	4%
Churches, hospitals, orphan asylums, public libraries, Bible and tract societies, religious, benevolent and charitable institutions operating solely within the State or organized under its laws.	All exempt	No tax			
All others.....	\$500	5% on all in excess of exemption.			

Note: For construction of act as to computation of tax and exemptions, see *Torrence v. Edwards*, 99 A. 136.

CHAPTER 228, LAWS OF 1909, AS AMENDED BY CHAPTER 28, LAWS OF 1910; CHAPTER 226, LAWS OF 1912; CHAPTER 151, LAWS OF 1914; CHAPTER 58, LAWS OF 1914; CHAPTER 115, LAWS OF 1916; CHAPTER 213, LAWS OF 1916; CHAPTER 728, LAWS OF 1917; CHAPTER 237, LAWS OF 1917, AND CHAPTER 283, LAWS OF 1918.

## Chapter 228, Laws of 1909.

\*(As Amended.)

An Act to tax the transfer of property, of resident and nonresident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases, approved April twentieth, one thousand nine hundred and nine.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

\*1. A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, except as hereinafter provided, in the following cases:

First. When the transfer is by will or by the intestate laws of this State from any person dying seized or possessed of the property while a resident of the State.

\*Second. When the transfer is by will or intestate law, of real property within this State, or of goods, wares and merchandise within this State, or of shares of stock of corporations of this State, or of national banking associations located in this State, and the decedent was a nonresident of the State at the time of his death.

\*Third. When the transfer is of property made by a resident, or is of real property within this State, or of goods, wares and merchandise within this State, or of shares of stock of corporations of this State or of national banking associations located in this State, made by a nonresident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor,



vendor or donor, or intended to take effect, in possession or enjoyment at or after such death.

\*Fourth. When any person or corporation comes into the possession or enjoyment, by a transfer from a resident or from a nonresident decedent, when such nonresident decedent's property consists of real property within this State or of shares of stock of corporations of this State or of national banking associations located in this State, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by an instrument taking effect after the passage of this act, or of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of this act.

All taxes imposed by this act shall be at the rate of five per centum upon the clear market value of such property, except as hereinafter provided, to be paid to the Treasurer of the State of New Jersey, for the use of said State, and all administrators, executors, trustees, grantees, donees or vendees, shall be personally liable for any and all such taxes until the same shall have been paid as hereinafter directed, for which an action of debt shall lie in the name of the State of New Jersey.

Property passing to churches, hospitals and orphan asylums, public libraries, Bible and tract societies, religious, benevolent and charitable institutions and organizations, organized under the laws of this State, or operating solely within this State, shall be exempt from taxation under this act and also property to the amount of five thousand dollars passing to a father, mother, husband, wife, child or lineal descendant born in lawful wedlock, brother or sister, or the wife or widow of a son or the husband of a daughter, shall be exempt from taxation under this act, but no other exemption of any kind or character shall be allowed. Property transferred to a father, mother, brother or sister, or the wife or widow of a son, or the husband of a daughter, shall be taxed at the rate of two per centum on any amount in excess of five thousand dollars, up to fifty thousand dollars; two and one-half per centum on any amount in excess of fifty thousand dollars up to one hundred and fifty thousand dollars; three per centum on any amount in excess of one hundred and fifty thousand dollars, up to two hundred and fifty thousand dollars; and four per centum on all amounts in excess of two hundred and fifty thousand dollars. Property transferred to any child or children, husband or wife, of a decedent, or to the issue of any child or children of a decedent, shall be taxed at the rate of one per centum on any amount in excess of five thousand dollars, up to fifty thousand dollars; one and one-half per centum on any amount in excess of fifty thousand dollars, up to one hundred and fifty thousand dollars; two per centum on any amount in excess of one hundred and fifty thousand dollars, up to two hundred and fifty thousand dollars; and three per centum on any amount in excess of two hundred and fifty thousand dollars. Property passing to a child or children of any decedent, adopted in conformity with the laws of this State, or any of the United States, or of any foreign kingdom or nation, or to the issue of any such child or children, shall be taxed at the same rate with the same exemption up to five thousand dollars allowed as a child or children born in lawful wedlock, or the issue of any such child or children, and the same amount of tax shall be imposed upon and the same exemption up to five thousand dollars allowed to any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; *provided, however*, such relationship began at or before the child's fifteenth birthday and was continuous for at least ten years thereafter; *provided, further*, that nothing in this act contained shall be construed to repeal or in anywise impair the provisions of an act entitled "An act to provide for the payment to counties of five per centum of transfer taxes collected," approved April twenty-first, one thousand nine hundred and nine, but the said act shall remain in full force and effect as though this act had not been passed.

\*2. When any person shall bequeath or devise, convey, grant, sell, or give any property or interest therein, or income therefrom, to any person or corporation for life or for a term of years, and a vested interest in the remainder

or corpus of said property to any person, or to any body politic or corporation, the whole of said property so transferred as aforesaid, shall be appraised immediately at its clear market value; and the value of said life estate or estate for a term of years shall be fixed in the manner hereinafter provided by section fourteen of this act; and the value of the remainder in said property so limited shall be ascertained by deducting the value of the said life estate or estate for a term of years from the appraised market value of the property so limited; and the tax on the said estate or estates, remainder or remainders, interest or interests, shall be immediately due and payable and remain a lien upon the entire property so limited until paid.

\*3. Where an instrument creates an executory devise, or an estate in expectancy of any kind or character which is contingent or defeasible, the property transferred in accordance with such executory devise, or the property in which such contingent or defeasible interest is created by any such instrument, shall be appraised immediately at its clear market value, and after deducting from such appraisement the value of the life estate, or estate for a term of years, created by such instrument, the tax on such life estate, or estate for a term of years, if taxable under this act, shall be immediately levied and assessed but the tax on the balance of said appraised value of such estate shall not be levied or assessed until the person or corporation entitled to said property comes into the beneficial enjoyment, seizin or possession thereof, and if taxable shall then be taxed. Where an instrument creates a power of appointment, the life estate, or estate for a term of years, created and transferred by such instrument, if taxable, shall be immediately appraised and taxed at its clear market value, but the appraisal and taxation of the interest or interests in remainder to be disposed of by the donee of power shall be suspended until the exercise of the power of appointment, and shall then be taxed, if taxable, at the clear market value of such property, which value of such property shall be determined as of the date of the death of the creator of the power.

A tax on an estate for life, or on an estate for a term of years, levied and assessed as directed in this section, shall be due and payable as provided in section five of this act. All other taxes levied and assessed as directed in this section and all taxes on any property which may be transferred to the residuary legatees, heir or next of kin of any decedent, or which may revert to the heir of any decedent by reason of the failure of any contingency upon which any remainder may be limited, shall be due and payable within two months after the person entitled to the property shall come into the enjoyment, seizin or possession thereof, and if not paid shall thenceforth bear interest at the rate of ten per centum per annum until paid. No executor or trustee shall turn over any property of an estate mentioned in this section until the tax due thereon, and interest, if any, shall have been paid to the Treasurer of this State, and any executor or trustee who shall turn over any property prior to the payment of the tax due thereon, together with interest, shall be personally liable for such tax and interest, which said liability may be enforced by an action of debt in the name of the State of New Jersey.

The Comptroller of the Treasury of this State is hereby empowered and authorized to enter into an agreement with the executors or trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interest of the legatees or devisees were not ascertainable at the death of the testator, grantor, donor or vendor, and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said executors and trustees upon the payment of the taxes provided for in such composition; *provided, however*, that no such composition shall be conclusive in favor of said executors or trustees as against the interest of such cestuis que trust as may possess either present rights of enjoyment or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee.

*Provided further, however*, that if the executor, trustee or the person or

persons, or body politic or corporate, beneficially interested in the property chargeable with the tax shall elect to defer the adjustment of the taxes until the said person or persons, or body politic or corporate, shall come into actual possession or enjoyment of the said property, such person or persons, or body politic or corporate, or the executor or trustee, shall execute a bond to the State of New Jersey, in a penalty of twice the amount of the tax imposed at the highest possible rate, with such surety or sureties as the Comptroller of the Treasury shall approve, conditioned for the payment of the said tax and interest thereon at such time or period as hereinabove provided, which bond shall be filed in the office of the Comptroller of the Treasury. Upon the filing and approval of said bond, the Comptroller of the Treasury shall be authorized to issue consents permitting the transfer of any and all property disclosed in the proceeding.

4. Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of their commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devise or residuary legacy exceeds what would be a reasonable compensation for their services, such excess shall be liable to said tax, and the Ordinary, or the Orphans' Court, having jurisdiction in the case, shall fix such compensation.

\*5. All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor or vendor, unless in this act otherwise provided, and if the same are paid within six months from the date of the death of the testator, intestate, grantor, donor or vendor, a discount of five per centum shall be allowed and deducted from such taxes; if not paid within one year from the date of the death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate of ten per centum per annum, to be computed from the expiration of one year from the date of the death of such testator, intestate, grantor, donor or vendor, until the same is paid, and in all cases where the executors, administrators, grantees, donees, vendees or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond to the State of New Jersey in double the amount of the tax, conditioned to pay said tax, and any interest which may fall due thereon, said bond to be approved as to the form and sufficiency thereof by the Comptroller of the Treasury of this State.

All taxes levied and assessed under this act on the transfer of any real property shall be and remain a lien on said real property until paid or secured by bond, as provided for in the several provisions of this act.

6. The penalty of ten per centum per annum imposed by section five hereof for the nonpayment of said tax shall not be charged where in cases by reason of claims made upon the estate necessary litigation or other unavoidable cause of delay the estate of any decedent, or a part thereof, cannot be settled at the end of a year from the death of the decedent, and in such cases only six per centum per annum shall be charged upon the said tax from the expiration of such year until the cause of such delay is removed.

7. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon upon the appraised value thereof from the legatee or persons entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay the same to the executor, administrator or trustee, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of such legacy might be enforced; if, however, such legacy be given in money to any person for a limited period he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts to make an apportionment, if the case require it, of the sum to be

paid into his hands by such legatees, and for such further order relative thereto as the case may require.

8. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax in the same manner as they may be enabled by law to do for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

9. Any sum of money retained by an executor, administrator or trustee, or paid into his hands for any tax due under this act, shall be paid by him within thirty days thereafter, to the Treasurer of this State, and the person so paying shall be entitled to receive a receipt signed by the Treasurer of this State and countersigned by the Comptroller thereof, for such payment, which receipt shall be a proper voucher in the settlement of the account of any such executor, administrator or trustee; such person so paying, in addition to the foregoing receipt, shall, if the tax paid be in part or in whole upon real property, be entitled to receive an additional receipt, signed by the Treasurer of this State, and countersigned by the Comptroller thereof, in which shall be designated upon what real property, if any, said tax has been paid, and by whom paid, and whether or not it is in full of said tax on said real property, and said receipt may be recorded in the clerk's office of the county in which said real property is situated, in a book which shall be kept by said clerk for such purpose and labeled "collateral tax."

\*10. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any devisee or beneficiary other than the corporations, institutions and organizations specifically exempted under the provisions of this act from the tax imposed hereby, it shall be the duty of the heirs, devisees, executors, administrators or trustees of such decedent to give information thereof in writing to the Comptroller of the Treasury of this State within six months after they obtain title thereto or undertake the execution of their respective duties, or, if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

11. Whenever any debts shall be proven against the estate of the decedent, after the payment of the legacies or distribution of property from which the said tax has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the State Treasurer, or by the State Treasurer, if the same has been paid into the State Treasury.

\*12. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of a decedent, or standing in the joint names of such a decedent and one or more persons, or in trust for a decedent, liable to any such tax, the tax shall be paid to the Treasurer of this State on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control, securities, deposits or other assets belonging to or standing in the name of a decedent who was a resident, or belonging to or standing in the joint name of such a resident decedent and one or more persons, including the shares of the capital stock of, or other interests in, safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the Comptroller of the Treasury of this State at least ten days prior to said delivery or transfer; nor shall any such deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a resident decedent, or belonging to or standing in the joint names of a resident decedent and one or more persons, including the shares of the capital stock of, or other interests in,

the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits, shares of stock, or other assets, including the shares of capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer, under the provisions of this act, unless the Comptroller of the Treasury consents thereto in writing. And it shall be lawful for the said Comptroller of the Treasury, either personally or by representative, to examine said securities, deposits or assets of a resident decedent, at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits, shares of stock, or other assets, including the shares of capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto a penalty of one thousand dollars; which liability for such tax and interest, or the penalty above described, or both, shall be enforced in an action of debt in the name of the State of New Jersey, and the same, when recovered, shall be paid into the treasury of the State of New Jersey for the use of the State; *provided*, there shall be no liability for the payment of such tax and interest, or for such penalty of one thousand dollars in any case where such safe deposit company, trust company, corporation, bank or other institution, person or persons shall make delivery of securities, deposits, shares of stock or other assets, including the shares of capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, belonging to or standing in the names of two or more persons, without knowledge or reasonable ground to believe, that one of the persons to whom such securities, deposits or other assets belong or in whose name they stand is dead.

No corporation of this State shall transfer any stock of said corporation standing in the name of or belonging to a decedent, resident or nonresident, or in the joint names of a decedent and one or more persons, or in trust for a decedent, unless notice of the time of such intended transfer be served upon the Comptroller of the Treasury of this State at least ten days prior to such transfer, nor until said Comptroller shall consent thereto in writing. Any corporation making such a transfer without first obtaining the consent of the Comptroller of the Treasury as aforesaid shall be liable for the amount of any tax which may thereafter be assessed on account of the transfer of such stock, together with the interest thereon, and in addition thereto a penalty of one thousand dollars, which liability for such tax and interest and the said penalty prescribed may be enforced in an action of debt in the name of the State of New Jersey, said penalty, when recovered, to be paid into the treasury of the State of New Jersey.

A tax shall be assessed on the transfer of property made subject to tax as aforesaid in this State of a nonresident decedent if all or any part of the estate of such decedent, wherever situated, shall pass to persons or corporations taxable under this act, which tax shall bear the same ratio to the entire tax which the said estate would have been subject to under this act if such nonresident decedent had been a resident of this State, and all his property, real and personal, had been located within this State, as such taxable property within this State bears to the entire estate, wherever situated; *provided*, that nothing in this clause contained shall apply to any specific bequest or devise of any property in this State.

13. The Comptroller of the Treasury of this State, either personally or by any of his employees, may investigate the question of the liability of any property to any tax due prior to the passage of this act, and if said Comptroller is satisfied that any taxes are due this State, he shall report such fact

to the register of the Prerogative Court, or surrogate of the proper county, whereupon said register or surrogate shall cause said property to be taxed.

14. In determining the value of a life estate, annuity, or estate for a term of years, the American Experience Table of Mortality, with interest at the rate of five per centum per annum shall be used.

15. When any amount of said tax shall have been paid erroneously to the State Treasurer, it shall be lawful for the Comptroller of the Treasury on satisfactory proof rendered to him of such erroneous payments, to draw his warrant on the State Treasurer, in favor of the executor, administrator, person or persons who have paid any such tax in error, or who may be lawfully entitled to receive the same, for the amount of such tax so paid in error; *provided*, that all such applications for the repayment of such tax shall be made within two years from the date of such payment.

16. The register of the Prerogative Court and every surrogate of any county in this State shall, within ten days after the probate of any will, either foreign or domestic, or the filing of a copy of any foreign will, or the taking out of letters of administration, notify, in writing, the Comptroller of the Treasury of this State of such probate or administration; and any surrogate or the register of the Prerogative Court failing to notify said Comptroller in writing of the probate of any will, or the filing of a copy of any foreign will, or the taking out of any letters of administration, shall be liable to a penalty of two hundred dollars, to be recovered in an action of debt in the name of the State of New Jersey.

17. The Comptroller of the Treasury of this State, either personally or by his assistant or other employee, is hereby empowered to examine any and all papers, documents and files which now are or hereafter may be filed or lodged with the register of the Prerogative Court, or with the surrogate of any county or with any other official of this State or of any municipality thereof, or with any person or corporation, for the purpose of ascertaining what, if any, property is, or shall be, liable to the payment of the tax provided for by this act. The sum of ten thousand dollars is hereby appropriated to the Comptroller of the Treasury of this State for the purpose of enabling said Comptroller to carry out the provisions of this act.

18. In order to fix the value of property of persons whose estates shall be liable to the payment of a tax under this act, whether the same be in the ownership of a resident or nonresident decedent, the Comptroller of the Treasury of this State on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as and whenever occasion may require. Every such appraiser shall forthwith give notice, by mail, to such person as the Comptroller of the Treasury of this State shall direct, of the time and place when and where he will appraise such property. He shall at such time and place appraise the same at its fair market value, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make report thereof, and of such value, in writing to said Comptroller of the Treasury, together with such other facts in relation thereto as the said Comptroller of the Treasury may, by order, require, which report and other data required by said Comptroller shall be filed in the office of such Comptroller, and from said report the said Comptroller of the Treasury shall forthwith assess and fix the cash value of such estate and levy the tax to which the same is liable, and shall immediately give notice thereof, by mail to all parties known by said Comptroller of the Treasury to be interested therein. Any person or corporation dissatisfied with said appraisement or assessment may appeal therefrom to the Ordinary of this State within sixty days after the making and filing of such assessment, on giving a bond, approved by the Ordinary of this State, conditioned to pay said tax so as aforesaid levied by the said Comptroller of the Treasury, together with interests and costs, if the said tax be affirmed by the Ordinary. Any person failing to attend before an appraiser after service of a subpoena, or refusing to give evidence concerning

any estate, shall be liable to a penalty of two hundred dollars, to be recovered in an action of debt by the Comptroller of the Treasury.

19. Any appraiser appointed pursuant to the provisions of this act who shall take any fee or reward, either directly or indirectly, from any executor or administrator, or any other person liable to pay any tax or any portion thereof, under the provisions of this act, shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court, and, in addition thereto, the Comptroller of the Treasury of this State shall immediately dismiss such appraiser from his employment. The compensation of said appraisers shall be a sum not exceeding five dollars per day, to be fixed and determined upon by the said Comptroller of the Treasury, and to be paid out of the treasury of this State. Such appraisers shall also be reimbursed for all actual expenses incurred in the discharge of their duties.

20. The Ordinary of this State shall have jurisdiction to hear and determine all questions in relation to any tax levied under the provisions of this act.

21. If it shall appear to the Comptroller of the Treasury of this State that any tax which has accrued under this act has not been paid according to law said Comptroller shall report such fact, in writing, to the register of the Prerogative Court, and said register shall issue a citation citing the persons or corporations interested in the property liable to said tax to appear before the Ordinary on a certain day, not more than three months from the date of such citation, and show cause why such tax should not be paid; the service of such citation and the subsequent proceedings had thereon shall conform to the practice prevailing in the Prerogative Court. Upon the making of any decree the register of the Prerogative Court shall, upon the request of the Comptroller of the Treasury of this State furnish one or more copies of said decree, and the same shall be docketed and filed by the clerk of the Supreme Court, or by the county clerk of any county in this State, upon the request of the Comptroller of the Treasury of this State, and the same shall have the same effect as a lien by judgment, and execution shall issue thereon according to the rule and practice appertaining to other judgments docketed and filed with said respective clerks.

22. Whenever the Comptroller of the Treasury of this State shall have reason to believe that any tax is due and unpaid under this act, after the neglect and refusal of the persons or corporations interested in the property and liable to said tax to pay the same, he shall notify the Attorney-General of this State, in writing, of such failure to pay such tax, and the said Attorney-General, when so notified, if he have probable cause to believe that a tax is due and unpaid, shall prosecute the proceeding before the Ordinary of this State, as provided for in section twenty-one of this act, and the State Treasurer shall, on the warrant of the Comptroller, pay all the expenses of said proceeding.

23. The Comptroller of the Treasury of this State shall keep a record in his department of all returns made by appraisers, the cash value of annuities, life estates and term of years, and the amount of all taxes assessed by him; in addition to the foregoing the said Comptroller may enter in said books all other information and data which he may deem desirable or proper.

24. Whenever a resident of this State has died, or shall hereafter die, testate or intestate, seized or possessed of any property liable to the payment of a tax under the provisions of this act, and no letters testamentary or of administration have or shall have been taken out on such estate within one year from the date of the death of such person, or whenever there is property, real or personal, within this State owned by a nonresident decedent which is liable to the payment of a tax under this act, and such nonresident decedent has been deceased for a period of three months without the tax due this State having been paid, it shall be lawful for the Comptroller of the Treasury of this State to enter into an agreement, in writing, with any person giving him information of the existence of property so liable to a tax, to pay to such person or persons out of any sum which may be collected from any such estate an amount not exceeding ten per centum thereof.

25. Every executor, administrator, trustee, grantee, donee or vendee who wilfully and knowingly subscribes or makes any false statement of facts, or knowingly subscribes or exhibits any false paper or false report with intent to deceive any appraiser appointed pursuant to the provisions of this act, shall be guilty of a misdemeanor and punished accordingly.

26. The words "estate" and "property," wherever used in this act, except where the subject or context is repugnant to such construction, shall be construed to mean the interest of the testator, intestate, grantor, bargainor or vendor, passing or transferred to the individual or specific legatee, devisee, heir, next of kin, grantee, donee or vendee, not exempt under the provisions of this act, whether such property be situated within or without this State. The word "transfer," as used in this act, shall be taken to include the passing of property, or any interest therein, in possession or enjoyment, present or future, by distribution by statute, descent, devise, bequest, grant, deed, bargain, sale or gift.

27. In case for any reason any section or any provision of this act shall be questioned in any court, and shall be held to be unconstitutional or invalid, the same shall not be held to affect any other section or provision of this act.

28. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but nothing in this repealer shall affect or impair the lien of any taxes heretofore assessed, or any tax due and payable, or any remedies for the collection of the same, or to surrender any remedies, powers, rights or privileges acquired by the State under any act heretofore passed, or to relieve any person or corporation from any penalty imposed by said acts.

#### Chapter 58, P. L. 1914.

A Supplement to an act entitled "An act to tax the transfer of property, of resident and nonresident decedents, by devise, bequests, descent, distribution by statute, gift, deed, grant, bargain, and sale, in certain cases," approved April twentieth, one thousand nine hundred and nine.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Whenever a foreign executor, administrator or trustee shall desire to transfer stock in a New Jersey corporation, owned by a nonresident decedent, it shall and may be lawful for the Comptroller of the Treasury of this State to issue a waiver for the transfer of said stock upon such foreign executor, administrator or trustee paying to the Comptroller of the Treasury a five per centum tax, based upon the full value of the said shares of stock or property. If after said transfer it shall be ascertained by the Comptroller of the Treasury that the said stock or property was not liable to said full five per centum tax, said Comptroller of the Treasury shall by his check pay to said executor, administrator or trustee the amount overpaid to the State Comptroller. For the purpose of carrying into effect the provisions of this act, the Comptroller of the Treasury is hereby expressly authorized to maintain a separate fund into which shall be paid the amount of taxes as aforesaid, and when the exact or precise tax which the stock or property in New Jersey is liable for shall have been ascertained, the Comptroller of the Treasury shall pay to the Treasurer of the State of New Jersey, the amount of said tax so ascertained to be due.

2. This act shall take effect immediately.

Approved, March 26th, 1914.



## NEW JERSEY FORMS.

## TRANSFER INHERITANCE TAX, NONRESIDENT DECEDENTS.

STATE OF NEW JERSEY.

OFFICE OF THE COMPTROLLER OF THE TREASURY.

Trenton ....., 19...

}	IN RE
	ESTATE OF
	.....
}	LATE OF .....

In Reply to Letter of ....., 191...

Dear Sir:

Herewith enclosed find a form of affidavit indicating the requirements of this Department with reference to the estate of a nonresident decedent. This affidavit should be completed in detail and returned to this Department.

*The proceeding will receive no attention whatsoever unless there is a strict compliance with all the requirements indicated in said affidavit.*

As the Department indices are kept by estates, all communications should indicate plainly the estate by name. Certificates of shares of stock are neither desired, required nor necessary and must not be forwarded to this Department. READ CAREFULLY THE INSTRUCTIONS PRINTED IN THE AFFIDAVIT. THEY ARE VERY IMPORTANT.

Very respectfully,

NEWTON A. K. BUGBEE,  
Comptroller.

## STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, NONRESIDENT DECEDENTS.

IN THE MATTER OF THE ESTATE OF	}	Administrator
.....		Executor
Deceased,		Affidavit of
Late of .....		ss.:
State of .....		
County of .....		

....., Executor Administrator of the estate  
of the above-named decedent, being duly sworn, depose and say :

Decedent died { testate }  
                                  { intestate } ....., 19...

Address of deponent or deponents is .....

Attorney of Estate is .....

Address of Attorney is .....

Total amount of real estate, less mortgages, Schedule A..... \$.....

Total amount of personal estate, Schedule B..... \$.....

Total amount of estate wherever situate..... \$.....

Total amount of debts (exclusive of mortgages on real estate),  
including funeral, administration and other expenses, de-  
tailed in Schedule C..... \$.....

Net estate ..... \$.....

Property owned by decedent at date of death and subject to the jurisdiction of State of New Jersey:

Real estate, less mortgages.....	\$.....
Personal estate .....	\$.....

Total amount of real and personal estate subject to jurisdiction of the State of New Jersey, Schedule D.. \$.....

Deponent further says that the decedent was not possessed of any other property subject to the jurisdiction of the State of New Jersey.

The names of beneficiaries and relationship of each to decedent, etc., are as follows:

Names	Relationship	Survived Decedent State Yes or No	Age of Life Tenants or Annuitants at Death of Decedent	Interest of Beneficiary in Estate
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

Deponent further says that all of the above-named beneficiaries survived the decedent and are still living with the exception of

Names	Date of Death	Residence
.....	.....	.....
.....	.....	.....
.....	.....	.....

Sworn and subscribed before me this

..... day of ....., A. D. 19...

.....

.....	} Executor Administrator
.....	
.....	

#### IMPORTANT — READ FOLLOWING INSTRUCTIONS.

If decedent died TESTATE attach Certified copy of Will and Certificate of Qualification of Executors.

If decedent died INTESATE attach Certificate of Appointment of Administrator.

If this affidavit is made by an administrator strike out the word "Executor" wherever found herein, and if by an executor strike out the word "Administrator" wherever found.

Administrators with will annexed will use the letters "C. T. A." and forward certified copy of will.

All papers must be certified by the public official under whose jurisdiction the estate is, whether it be surrogate, probate judge or by whatever title such official may be designated.

ALL DOCUMENTS REMAIN ON FILE IN DEPARTMENT OF THE STATE COMPTROLLER as his authority and voucher for action taken.

Unauthenticated statements are not acceptable. Answer each question in detail. Make each schedule in full detail.

Relationship of Beneficiaries to decedent, whether or not such beneficiaries survived decedent and the interest of the beneficiary in the estate, are the important factors respecting Transfer Inheritance Tax. The age at time of death of decedent, of Beneficiaries who are life-tenants or annuitants, is information absolutely necessary.

Notaries public must affix seal or Certificate of Appointment to Affidavit.

When decedent died prior to April 20, 1909. In lieu of above form.  
 Establish this fact by certificate of public official authorized by law to so certify.  
 Supply certificate of appointment of executor or administrator.  
 Note { Supply affidavit of executor or administrator setting forth in detail the following data: Description of any and all property, real or personal, subject to the jurisdiction of the State of New Jersey and owned by the decedent at date of death; a recital stating whether or not the beneficiaries are still living; if any have died, give names, dates of death, and places of residence at date of death.  
 Attach certified copy of will, if decedent died testate.

If a tax is due, consent permitting the transfer of shares of stock of New Jersey corporation will not be granted unless and until said tax is paid. Security is not acceptable in lieu thereof. However, consent to transfer will be granted upon payment of 5% of the full market value of the stock or property. If, after said transfer, it shall be ascertained by the Comptroller of the Treasury that said stock or property was not liable to said full 5% tax, the Comptroller of the Treasury will return to the executor, administrator, trustee or other representative the amount overpaid.

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, NONRESIDENT DECEDENTS.

Attached to and part of affidavit.

SCHEDULE A

Real Property WHEREVER SITUATE, with statement of liens and encumbrances upon each parcel at death of decedent.

	Assessed Value for Year of Decedent's Death	Estimated Market Value	Value of Equity
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

IMPORTANT.

The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, NONRESIDENT DECEDENTS.

Attached to and part of affidavit.

SCHEDULE B

PERSONAL PROPERTY WHEREVER SITUATE.

- (Corporate Stocks.— State the correct corporate title, the number and kind of shares, the par and market values.
- (Corporate Bonds.— State correct corporate title, nature of bond, year due, and rate of interest. State the amount of accrued interest computed to the date of death of decedent.
- (Bonds and Mortgages, Notes, Etc.— Short description of each. State the amount of accrued interest computed to the date of death of decedent.)
- Cash in hand and on deposit, bonds and mortgages, promissory notes, claims, insurance, corporate bonds and stocks and all other personal property wherever situate.

	Estimated Market Value
.....	.....
.....	.....
.....	.....

## IMPORTANT.

The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, NONRESIDENT DECEDENTS.  
Attached to and part of affidavit.

## SCHEDULE C

## DETAILS OF DEBTS, OTHER THAN MORTGAGES ON REAL ESTATE.

(If any claims are secured by collateral, state what property has been pledged.)

Debt or Claim of	Nature of Same	Amount
.....	Funeral expenses .....	.....
.....	Administration expenses (estimated).....	.....
.....	Counsel Fees .....	.....
.....	Executor's or Administrator's Commissions.	.....
(Detail other Debts)		

## IMPORTANT.

The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, NONRESIDENT DECEDENTS.  
Attached to and part of affidavit.

## SCHEDULE D

Details of Real and Personal Property subject to the jurisdiction of the State of New Jersey. CONSENTS TO TRANSFER WILL BE GRANTED ONLY ON PROPERTY INCLUDED IN THIS SCHEDULE.

	Estimated Market Value
.....	.....
.....	.....
.....	.....

## IMPORTANT.

The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

## STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX.

IN THE MATTER OF THE APPRAISEMENT OF  
THE ESTATE OF  
..... } Affidavit  
Deceased.

STATE OF NEW JERSEY, }  
COUNTY OF ..... } ss.

....., being duly sworn according to law on oath says that he resides at ....., County of ....., New Jersey; that ....., who resided at the time of death at ....., County of ....., New Jersey, departed this life on the ..... day of ....., 19...; that this deponent is a ..... of said decedent.

(Relationship.)

That said decedent died intestate and that no application for letters of administration has been, or will be, made.

That the following are the names and addresses of the heirs-at-law and next of kin of said decedent.

Names and Addresses.	Relationship.
.....	.....
.....	.....
.....	.....

That said decedent was not possessed of any real property.

That decedent was possessed of the following personal property:

Deposit with ..... standing to the  
(Name of Bank.)

credit of ..... amounting to \$.....  
Deposit with ..... standing to the

(Name of Bank.)

credit of ..... amounting to \$.....

DETAIL OTHER PERSONAL PROPERTY.

Deponent further says that the said decedent was not possessed of any other property, real or personal, except as hereinabove recited; that the facts herein contained are true; that this affidavit is made for the purpose of inducing the Comptroller of the Treasury of the State of New Jersey to grant consents to the transfer of the assets of said decedent.

Sworn to and subscribed before me this  
..... day of ..... 19...

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, RESIDENT DECEDENT.

IN THE MATTER OF THE APPRAISEMENT OF THE ESTATE OF ..... Deceased.	}	Affidavit of Executor Administrator.
---	---	---

STATE OF NEW JERSEY, COUNTY OF .....	}	ss.
---	---	-----

..... Administrator  
Executor of the estate of the above-named decedent being duly sworn in this proceeding for the determination of the tax, if any, to be paid upon the asets of the said estate under the Act in Relation to Taxable Transfers of Property, deposes and says:

FIRST: That the said decedent died a resident of .....,  
County of ....., State of New Jersey, on the .....  
day of ....., 191..., Intestate, leaving a Last Will and Testament,  
a true copy of which is hereto attached and made part hereof, which was duly  
admitted to probate by the Surrogate of the County of .....  
on the ..... day of ....., 191..., and that Letters of Admin-  
istration Testamentary were duly issued by the said Surrogate of the County  
of ..... on the ..... day of ....., 191..., to  
this deponent, whose post-office address is .....  
....., whose post-office address is .....  
and ..... whose post-office address is .....

SECOND: That as such administrator executor deponent is personally  
familiar with the affairs of said estate, the property constituting the assets  
thereof and their fair market value, and with the debts, expenses and charges  
properly and legally allowable as deductions therefrom. That the decedent at  
the time of h.. death had no safe deposit box except .....

THIRD: That *Schedule A* attached hereto and made part hereof sets forth  
fully and in detail all the real property in the State of New Jersey of which  
decedent died seized and possessed, or in which ..he had any right, title or  
interest, at the time of h.. death, or of which ..he made any deed, grant,

bargain, sale or gift in contemplation of h. . death, or intended to take effect, in possession or enjoyment, at or after h. . death, or which by reason thereof fell into or became part of the assets of this estate by reversion, remainder or otherwise, excepting such as may have passed by virtue of the exercise by the decedent of any power of appointment vested in h. . by the Will or Deed or other instrument of another, and enumerated in *Schedule C*. It also sets forth a statement of the liens and encumbrances upon each parcel of real estate at the date of death, giving in the case of mortgages the amount, date, place, liber and page of record thereof. It also sets forth in the first marginal column the assessed valuation of each of said parcels and in the second marginal column the estimated market value thereof as of the date of death of said decedent, and in the third marginal column the value of the decedent's equity in said property.

FOURTH: That *Schedule B* attached hereto and made part hereof sets forth fully and in detail all the personal property wheresoever situated owned by the decedent or in which said decedent had any right, title or interest at the time of h. . death, or of which . . he made any deed, grant, bargain, sale or gift in contemplation of h. . death, or intended to take effect, in possession or enjoyment, at or after h. . death, or which by reason thereof fell into or became part of the assets of this estate, by reversion, remainder or otherwise, excepting such as may have passed by virtue of the exercise by the decedent of any power of appointment vested in h. . by the Will or Deed or other instrument of another, and enumerated in *Schedule C*. It also sets forth all of the moneys left by the decedent at the time of h. . death, whether in h. . immediate possession, standing to h. . credit or in which . . he had any right, title or interest, in banks of deposit, savings banks, trust companies, or other institutions, whether individually or in trust for or jointly with any other person, giving also separately the accrued interest thereon, if any, down to the last interest day prior to decedent's death in the case of savings banks, and down to the date of decedent's death in all other cases. It also sets forth all wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automobiles, boats, and any and all other personal chattels of whatsoever kind or nature, left by decedent, together with the fairly estimated market value thereof. It also sets forth a statement of all bonds and mortgages held by decedent and of all claims due and owing decedent at the time of h. . death, and of all the promissory notes or other instruments in writing for the payment of money of which . . he died possessed, of whatsoever nature, with interest thereon, if any, giving the face values and estimated fair market values thereof, and if such estimated fair market values be less than the face value, setting forth in brief the reason for such depreciation as to each item. It also sets forth a statement of any and all moneys payable to the estate from life insurance policies carried by decedent. It also sets forth all the corporate stocks, bonds and accrued interest thereon to the date of decedent's death, or other investment securities owned by the decedent at the time of h. . death, with the market value thereof at such time, and in the case of rare and unlisted corporate securities, giving the State of incorporation of the corporation issuing the same, its capitalization, the value and nature of its assets, its liabilities, its surplus, the book value of its stock, the dividends paid, and any other facts which may be pertinent affecting the value of said securities. It also sets forth the interest of decedent at the time of h. . death in any copartnership or business, stating the nature and location thereof, the total capital employed, the gross profits, expenses and net profits of the business for at least three years prior to decedent's death, and any other facts pertaining to such business as may be pertinent to a fair and just appraisal of decedent's interest in said business and good-will thereof. It also sets forth in itemized form, together with the fair market value thereof, any other property owned or left by the decedent at the time of h. . death.

FIFTH: That *Schedule C* attached hereto and made part hereof sets forth all the property, real and personal, which passed at decedent's death by virtue of the exercise by h. . of any power of appointment vested in h. . by the Will, Deed or instrument of another, together with the fair market value of

each and every item thereof and a statement in brief of the sources and derivation of such power, copies of which Will, Deed or other instrument are submitted herewith. It also sets forth all sums by way of commissions properly and legally chargeable against such property.

SIXTH. That *Schedule D* attached hereto and made part hereof sets forth the valid debts due and owing by decedent at the time of h.. death and allowed as just and fair by the Administrator Executor, together with any and all items claimed by the Administrator Executor as proper deductions herein. It does not include any claims as enter into the computation of decedent's interest in any copartnership or business. It also sets forth the funeral expenses, administration expenses, counsel fees paid or estimated.

SEVENTH: That *Schedule E* attached hereto and made part hereof sets forth the names and addresses of all persons beneficially interested in this estate, at the time of decedent's death, the nature of their respective interests, their relationship, if any, to the decedent, together with the ages at the time of decedent's death of all minors, annuitants and beneficiaries for life under decedent's Will, if any. It also contains a statement showing which of the beneficiaries named in decedent's Will, if any, died prior to decedent, the dates of their deaths, their survivors, and the relationship of such survivor to decedent.

EIGHTH: That the deponent has made due and diligent search for property of every kind, nature and description left by the decedent, and has been able to discover only that set forth in the schedules attached hereto and made part hereof, and that no information of any other property of the decedent has come to h.. knowledge, and that ..he verily believes that decedent left no property except as herein set forth. That all the sums claimed as deductions in the schedules hereto attached and made part hereof are lawful, just and fair. Deponent further says that wherever in any of the schedules the word "none" has been written in or wherever such schedule has been left blank, such word or omission is to be taken as equivalent to an affirmative allegation by deponent that the decedent left no property of the kind to which said schedule relates.

Subscribed and sworn to before me this  
..... day of .....  
191..

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, RESIDENT DECEDENT.  
SCHEDULE "A"

REAL PROPERTY IN NEW JERSEY, WITH STATEMENT OF LIENS AND ENCUMBRANCES  
UPON EACH PARCEL AT DEATH OF DECEDENT.

DESCRIPTION OF REAL ESTATE Give Lot and Block or Street Number, or a Reference to the Record of the Convey- ance by Which the Decedent Took Title.	Assessed Value for Year of Decedent's Death	Estimated Market Value	Value of Equity	CAUTION (Do not write in this space)
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

SCHEDULE "B"

PERSONAL PROPERTY.

CASH IN HAND AND ON DEPOSIT, BONDS AND MORTGAGES, PROMISSORY  
NOTES, CLAIMS, INSURANCE, CORPORATE BONDS AND STOCKS AND  
ALL OTHER PERSONAL PROPERTY WHEREVER SITUATE.

	Estimated Market Value	CAUTION (Do not write in this space)
.....	.....	.....
.....	.....	.....
.....	.....	.....

## SCHEDULE "C"

PROPERTY PASSING BY DECEDENT'S EXERCISE OF ANY POWER OF APPOINTMENT  
VESTED IN HIM UNDER THE WILL, DEED OR OTHER  
INSTRUMENT OF ANOTHER.

.....  
.....  
.....

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, RESIDENT DECEDENT.

## SCHEDULE "D"

## DEDUCTIONS.

Debt or Claim of	Nature of Same	Amount	CAUTION (Do not write in this space)
.....	Funeral expenses.....	.....	.....
.....	Administration expenses (estimated) .....	.....	.....
.....	Counsel Fees .....	.....	.....
.....	Executor's or Administra- tor's Commissions .....	.....	.....
(Detail Other Debts)	(Commissions must not be estimated and claimed un- less a final account is to be filed with the Surro- gate.)	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

## SCHEDULE "E"

## BENEFICIARIES.

Names	Relationship	Survived Decedent State Yes or No	Age of Life Tenants or Annuitants at Death of Decedent	Interest of Beneficiary in Estate
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, RESIDENT DECEDENT.

IN THE MATTER OF THE APPRAISEMENT OF THE ESTATE OF ..... Deceased.	} Affidavit of Executor Administrator.
---	---

STATE OF NEW JERSEY, COUNTY OF .....	} ss.
---	-------

....., Administrator  
Executor of the estate of the above-named decedent being duly sworn in this  
proceeding for the determination of the tax, if any, to be paid upon the assets  
of the said estate under the Act in Relation to Taxable Transfers of Property,  
deposes and says:



FIRST: That the said decedent died a resident of ..... County of ....., State of New Jersey, on the ..... day of ....., 191..., Intestate, leaving a Last Will and Testament, a true copy of which is hereto attached and made part hereof, which was duly admitted to probate by the Surrogate of the County of ..... on the ..... day of ....., 191..., and that Letters of Administration Testamentary were duly issued by the said Surrogate of the County of ..... on the ..... day of ....., 191..., to this deponent, whose post-office address is ....., ....., whose post-office address is ....., and ....., whose post-office address is .....

SECOND: That as such administrator executor deponent is personally familiar with the affairs of said estate, the property constituting the assets thereof and their fair market value, and with the debts, expenses and charges properly and legally allowable as deductions therefrom. That the decedent at the time of h.. death had no safe deposit box except .....

THIRD: That *Schedule A* attached hereto and made part hereof sets forth fully and in detail all the real property in the State of New Jersey of which decedent died seized and possessed, or in which ..he had any right, title or interest at the time of h.. death, or of which ..he made any deed, grant, bargain, sale or gift in contemplation of h.. death, or intended to take effect, in possession or enjoyment, at or after h.. death, or which by reason thereof fell into or became part of the assets of this estate by reversion, remainder or otherwise, excepting such as may have passed by virtue of the exercise by the decedent of any power of appointment vested in h.. by the Will or Deed or other instrument of another, and enumerated in *Schedule C*. It also sets forth a statement of the liens and encumbrances upon each parcel of real estate at the date of death, giving in the case of mortgages the amount, date, place, liber and page of record thereof. It also sets forth in the first marginal column the assessed valuation of each of said parcels and in the second marginal column the estimated market value thereof as of the date of death of said decedent, and in the third marginal column the value of the decedent's equity in said property.

FOURTH: That *Schedule B* attached hereto and made part hereof sets forth fully and in detail all the personal property wheresoever situated owned by the decedent or in which said decedent had any right, title or interest at the time of h.. death, or of which ..he made any deed, grant, bargain, sale or gift in contemplation of h.. death, or intended to take effect, in possession or enjoyment, at or after h.. death, or which by reason thereof fell into or became part of the assets of this estate, by reversion, remainder or otherwise, excepting such as may have passed by virtue of the exercise by the decedent of any power of appointment vested in h.. by the Will or Deed or other instrument of another, and enumerated in *Schedule C*. It also sets forth all of the moneys left by the decedent at the time of h.. death, whether in h.. immediate possession, standing to h.. credit or in which ..he had any right, title or interest, in banks of deposit, savings banks, trust companies, or other institutions, whether individually or in trust for or jointly with any other person, giving also separately the accrued interest thereon, if any, down to the last interest day prior to decedent's death in the case of savings banks, and down to the date of decedent's death in all other cases. It also sets forth all wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automobiles, boats, and any and all other personal chattels of whatsoever kind or nature, left by decedent, together with the fairly estimated market value thereof. It also sets forth a statement of all bonds and mortgages held by decedent and of all claims due and owing decedent at the time of h.. death, and of all the promissory notes or other instruments in writing for the payment of money of which ..he died possessed, of whatsoever nature, with interest thereon, if any, giving the face values and estimated fair market values thereof, and if such estimated fair market values

be less than the face value, setting forth in brief the reason for such depreciation as to each item. It also sets forth a statement of any and all moneys payable to the estate from life insurance policies carried by decedent. It also sets forth all the corporate stocks, bonds and accrued interest thereon to the date of decedent's death, or other investment securities owned by the decedent at the time of h.. death, with the market value thereof at such time, and in the case of rare and unlisted corporate securities, giving the State of incorporation of the corporation issuing the same, its capitalization, the value and nature of its assets, its liabilities, its surplus, the book value of its stock, the dividends paid, and any other facts which may be pertinent affecting the value of said securities. It also sets forth the interest of decedent at the time of h.. death in any copartnership or business, stating the nature and location thereof, the total capital employed, the gross profits, expenses and net profits of the business for at least three years prior to decedent's death, and any other facts pertaining to such business as may be pertinent to a fair and just appraisal of decedent's interest in said business and good-will thereof. It also sets forth in itemized form, together with the fair market value thereof, any other property owned or left by the decedent at the time of h.. death.

FIFTH: That *Schedule C* attached hereto and made part hereof sets forth all the property, real and personal, which passed at decedent's death by virtue of the exercise by h.. of any power of appointment vested in h.. by the Will, Deed or instrument of another, together with the fair market value of each and every item thereof and a statement in brief of the sources and derivation of such power, copies of which Will, Deed or other instrument are submitted herewith. It also sets forth all sums by way of commissions properly and legally chargeable against such property.

SIXTH: That *Schedule D* attached hereto and made part hereof sets forth the valid debts due and owing by decedent at the time of h.. death and allowed as just and fair by the Administrator Executor, together with any and all items claimed by the Administrator Executor as proper deductions herein. It does not include any claims as enter into the computation of decedent's interest in any copartnership or business. It also sets forth the funeral expenses, administration expenses, counsel fees paid or estimated.

SEVENTH: That *Schedule E* attached hereto and made part hereof sets forth the names and addresses of all persons beneficially interested in this estate, at the time of decedent's death, the nature of their respective interests, their relationship, if any, to the decedent, together with the ages at the time of decedent's death of all minors, annuitants and beneficiaries for life under decedent's Will, if any. It also contains a statement showing which of the beneficiaries named in decedent's Will, if any, died prior to decedent, the dates of their deaths, their survivors, and the relationship of such survivor to decedent.

EIGHTH: That the deponent has made due and diligent search for property of every kind, nature and description left by the decedent, and has been able to discover only that set forth in the schedules attached hereto and made part hereof, and that no information of any other property of the decedent has come to h.. knowledge, and that ..he verily believes that decedent left no property except as herein set forth. That all the sums claimed as deductions in the schedules hereto attached and made part hereof are lawful, just and fair. Deponent further says that wherever in any of the schedules the word "none" has been written in or wherever such schedule has been left blank, such word or omission is to be taken as equivalent to an affirmative allegation by deponent that the decedent left no property of the kind to which said schedule relates.

Subscribed and sworn to before me this

..... day of .....  
191...

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, RESIDENT DECEDENT.

SCHEDULE "A"

REAL PROPERTY IN NEW JERSEY, WITH STATEMENT OF LIENS AND ENCUMBRANCES  
UPON EACH PARCEL AT DEATH OF DECEDENT.

DESCRIPTION OF REAL ESTATE Give Lot and Block or Street Number, or a Reference to the Record of the Convey- ance by Which the Decedent Took Title.	Assessed Value for Year of Decedent's Death	Estimated Market Value	Value of Equity	CAUTION (Do not write in this space)
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, RESIDENT DECEDENT.

SCHEDULE "B"

PERSONAL PROPERTY.

CASH IN HAND AND ON DEPOSIT, BONDS AND MORTGAGES, PROMISSORY  
NOTES, CLAIMS, INSURANCE, CORPORATE BONDS AND STOCKS AND  
ALL OTHER PERSONAL PROPERTY WHEREVER SITUATE.

	Estimated Market Value	CAUTION (Do not write in this space)
.....	.....	.....
.....	.....	.....
.....	.....	.....

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, RESIDENT DECEDENT.

SCHEDULE "C"

PROPERTY PASSING BY DECEDENT'S EXERCISE OF ANY POWER OF APPOINTMENT  
VESTED IN HIM UNDER THE WILL, DEED OR OTHER  
INSTRUMENT OF ANOTHER.

.....
.....
.....

STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, RESIDENT DECEDENT.

SCHEDULE "D"

DEDUCTIONS.

Debt or Claim of	Nature of Same	Amount	CAUTION (Do not write in this space)
.....	Funeral expenses.....	.....	.....
.....	Administration expenses (estimated) .....	.....	.....
.....	Counsel Fees .....	.....	.....
.....	Executor's or Administra- tor's Commissions .....	.....	.....
(Detail Other Debts)	(Commissions must not be estimated and claimed un- less a final account is to be filed with the Surro- gate.)	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

## STATE OF NEW JERSEY, TRANSFER INHERITANCE TAX, RESIDENT DECEDENT.

## SCHEDULE "E"

## BENEFICIARIES.

Names	Relationship	Survived Decedent State Yes or No	Age of Life Tenants or Annuitants at Death of Decedent	Interest of Beneficiary in Estate
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

## NEW MEXICO.

Taxes intangible property of nonresidents within the State where State of domicile imposes such taxes upon residents of New Mexico.

TABLE OF RATES

Class or Relationship	Exemption	Tax
Parents, lineal descendants, legally adopted children, daughter-in-law, son-in-law, brother or sister.	\$10,000 Proportioned to whole estate in case of non-residents.	1% on all
All others	\$500	5% on all

Note.—The exemption of \$10,000 is proportioned to the whole estate when part is devised to direct heirs and part to collaterals and strangers.

## THE STATUTE.

The Legislature of New Mexico passed the first inheritance tax act of that State in 1919, effective January 1, 1920. It is known as "House Bill No. 378," L. 1919, and is given in full as follows:

## HOUSE BILL NO. 378.

An Act providing for a tax on transfers of property; fixing the rate thereof; providing machinery for the appraisal of decedents' estates; for the collection of such taxes, and repealing all acts and parts of acts in conflict with this act.

*Be it enacted by the Legislature of the State of New Mexico:*

Section 1. Definitions. The words "estate" and "property" as used in this act shall be taken to mean the property or interest therein passing or transferred to individual or corporate legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and not as the property or interest therein of the decedent, grantor, donor, or vendor, and shall include all property or interest therein, whether situated within or without this State. The words "tangible property" as used in this act shall be taken to mean corporeal property such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property, or evidences of debt. The words "intangible property" as used in this act shall be taken to mean incorporeal property, including money, deposits in banks, shares of stock, bonds, notes, credits, evidences of an interest in property and evidences of debt.

§ 2. The estate of every deceased person to the amount of ten thousand

dollars, when said estate shall pass to the parent or parents, lineal descendants, legally adopted child, lineal descendants of any legally adopted child, the wife or widow of a son, whether such son was born in wedlock or adopted, the husband of a daughter, whether such daughter was born in wedlock or adopted, or the brother or sister of the decedent, and, in addition to said amount, all gifts of paintings, pictures, books, engravings, bronzes, curios, bric-a-brac, arms, and armor, and collection of articles of beauty or interest, made by will to any corporation or institution located in this State for free exhibition and preservation for public benefit; also, in addition to said amount every devise, bequest or inheritance not exceeding five hundred dollars in amount or appraised value passing to other kindred or strangers to the blood, or to a corporation, voluntary association or society, shall be exempt from the payment of any succession tax; and, subject to such exemption, the estate of every deceased person shall be subject to the tax provided in section 3 hereof. When a portion of the property passes to or for the use of the parent or parents, husband, wife, lineal descendants, legally adopted child, lineal descendants of any legally adopted child, the wife or widow of a son, whether such son was born in wedlock or adopted, the husband of a daughter, whether such daughter was born in wedlock or adopted, or the brother or sister of the decedent and the remaining portion to other collateral kindred or strangers to the blood, or to a corporation, voluntary association or society, the amount exempted from taxation shall be that proportion of ten thousand dollars which the value of the property passing to those persons mentioned in the first class bears to the total value of the whole estate. The amount of the property of estates of nonresident decedents which shall be exempt from the payment of a succession tax shall be only that proportion of the whole exempted amount which is provided for the estates of resident decedents which the amount of the estate of the nonresident which is actually or constructively in this State bears to the total value of the nonresident decedent's estate wherever situated.

§ 3. In all such estates any property within the jurisdiction of this State, and any interest therein, whether tangible or intangible, and whether belonging to parties in this State or not, which shall pass by will or by inheritance or by other statutes to the parent or parents, husband, wife, or lineal descendants, or legally adopted child of the deceased person, shall be liable to, and there is hereby imposed thereon, a tax of one per centum of its value for the use of the State; and any such estate or interest therein which shall so pass to collateral kindred, or to strangers to the blood, or to any corporation, voluntary association, or society, shall be liable to, and there is hereby imposed thereon, a tax of five per centum of its value for the use of the State. All executors and administrators shall be liable for all such taxes, with interest thereon at the rate of nine per centum per annum from the time when said taxes shall become payable until the same shall have been paid as hereinafter directed.

§ 4. The provisions of section 3 hereof, shall apply to the following property belonging to deceased persons, nonresidents of this State, which shall pass by will or inheritance under the laws of any other State or country, and such property shall be subject to the tax prescribed in said section: All real estate and tangible personal property, including moneys on deposit, within this State; all intangible personal property, including bonds, securities, shares of stock, and choses in action, the evidences of ownership of which shall be actually within this State; shares of the capital stock or registered bonds of all corporations organized and existing under the laws of this State, the certificates of which stock or which bonds shall be without this State, where the laws of the State or country in which such decedent resided shall, at the time of his decease, impose a succession, inheritance, transfer, or similar tax upon the shares of the capital stock or registered bonds of all corporations organized or existing under the laws of such State or country, held under such conditions at their decease by residents of this State.

§ 5. When a will conveying property situated in this State has been proved and established out of this State, in and by a court of competent jurisdiction, the executor of said will, or any person interested in said property, may produce to the probate court in the county in which any of said property is

situated a duly authenticated and exemplified copy of such will, and of the record of the proceedings proving and establishing the same, and request that such copies be filed and recorded, which request shall be accompanied by a full and correct statement in writing of all property and estate of the decedent in this State; and if, upon due hearing had after public notice and such citation as said court shall order, no sufficient objection shall be shown, said court shall order said copies to be filed and recorded, and they shall thereupon become part of the files and records of said court, and shall have the same effect upon the property so conveyed as if said will had been originally proved and established in said probate court, but nothing in this section shall give effect to a will made in this State by an inhabitant thereof which is not executed according to the laws of this State. All property so passing shall be subject to all laws of this State relative to inheritances and successions.

§ 6. Whenever ancillary administration has been taken out in this State on the estate of any nonresident decedent having property subject to said tax under the provisions of this act, the probate court having jurisdiction shall have the same power in relation to such tax and shall give the same notice to the State Treasurer of all hearings relating thereto as is required in the case of the estates of resident decedents, and with the same right of appeal. The provisions of this act concerning notice to the State Tax Commission shall not apply to cases where ancillary administration has been taken out in this State upon the estates of nonresident decedents.

§ 7. Where ancillary administration has not been taken out in this State on the estate of a nonresident decedent, including any property within the provisions of section 4 of this act, no executor, administrator, or trustee appointed under the laws of any other jurisdiction shall assign, transfer, or take possession of any such property standing in the name or belonging to the estate of, or held in trust for, such decedent until the tax prescribed in section 3 shall have been paid to the State Treasurer or retained as hereinafter provided.

§ 8. No corporation or person in this State having possession of or control over any such property, including any corporation any shares of the capital stock of which may be subject to said tax, shall deliver or transfer the same to such foreign executor, administrator, or trustee, or to the legal representatives of such decedent, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be mailed to the State Tax Commission at least ten days prior to said delivery or transfer; nor shall any such corporation make any such delivery or transfer without retaining a sufficient amount of said property to pay any such tax which may be due or may thereafter become due under said section 3, unless the said State Tax Commission consents thereto in writing. Failure to mail such notice, or to allow the State Tax Commission to examine said property, or to retain a sufficient amount to pay such tax shall, in the absence of the written consent of the State Tax Commission, render such corporation or person liable to the payment of a penalty of three times the amount of such tax, which payment shall be enforced in an action brought in the name of the State.

§ 9. Said State Tax Commission may examine said property at the time of said delivery or transfer, and it shall be the duty of the said Commission, as speedily as possible after receiving notice of said property or of the intended delivery or transfer thereof, to fix the valuation of such property for the purpose of assessing such tax; and it shall assess the tax, and the amount thereof, payable on said property. Wherever a tax is assessed on such property by such State Tax Commission it shall forthwith lodge with the State Treasurer a statement showing such valuation with the amount of said tax, and shall give notice thereof to the person or corporation having possession of or control over said property. Any administrator or executor appointed under the laws of any other jurisdiction who is aggrieved by the valuation or assessment affixed as aforesaid by the Tax Commission, may, within twenty days after the date of the filing of the aforesaid statement with the Treasurer, apply to the probate court in any district in which any of said property so assessed is situated, which court shall have full power to cause a revaluation of all property so assessed and a reassessment of the tax thereon, to be made

in the manner provided by law for the appraisal of and the assessment of the succession tax on estates of resident decedents, and subject to the same right of appeal.

§ 10. The probate court having jurisdiction of the settlement of any estate, shall, within ten days after the filing of a will or the application for letters of administration, if in its opinion said estate exceeds in value said sum of ten thousand dollars, send to the Treasurer of the State a certificate of the filing of such will or application, and shall within ten days after the return and acceptance of the inventory and appraisal of any such estate send a certified copy of said inventory and appraisal to the Treasurer of the State, together with his certificate as to the correctness in his opinion of said inventory and appraisal; and if no new appraisal is made as hereinafter provided the valuation therein given shall be taken as the basis for computing said taxes. The said probate court shall, on the application of the Treasurer of the State, or any person interested in the succession thereof and within four months after granting administration, appoint three disinterested persons who shall view and appraise such property at its actual value for the purposes of said tax, and make return, after notice and hearing, the valuation therein made shall be binding upon the persons interested and upon the State. If any executor or administrator shall neglect or refuse to return an inventory and appraisal within the time now required by law, unless said time shall have been extended by said court for cause, after hearing and such notice as the probate court may require the said probate court may remove said executor or administrator and appoint another person administrator with the will annexed, or administrator, as the case may be.

§ 11. All taxes levied and collected under this act, less necessary expenses of collection, shall be paid to the State Treasurer, for the benefit of the general revenue fund, by the executor or administrator within twelve months of the qualification of such executor or administrator, except as hereinafter provided. If for any cause found by the said probate court to be reasonable after hearing and notice to the State Treasurer, the executor or administrator is unable to pay said tax within the time limited, the said probate court shall have power in its discretion to extend the time, not exceeding twelve months, for the payment of said taxes.

§ 12. Where any estate or an annuity is bequeathed or devised to any person for life or any limited period, with remainder over to another or others, and all the beneficiaries are within the same class, the tax shall be computed on and paid as aforesaid out of the principal sum of property so bequeathed or devised. Where a life estate or an annuity is bequeathed or devised to a parent or parents, husband, wife or lineal descendants, or legally adopted child, and remainder over to collateral kindred, or to strangers to the blood, or to a corporation, voluntary association, or society, then the tax of one per centum shall be paid out of the principal sum or estate so bequeathed or devised for life, or constituting the fund producing said annuity, and the remaining four per centum due from collateral kindred or strangers to the blood shall be paid out of the said principal sum or estate at the expiration of the particular estate or annuity. And where a life estate or annuity is bequeathed or devised to collateral kindred or strangers to the blood, or to a corporation, voluntary association, or society, with remainder to parent or parents, husband, wife or lineal descendants, or legally adopted child, a tax of five per centum shall be paid as aforesaid to the Treasurer of the State out of the principal sum or estate, or fund producing such annuity; on the termination of said life estate or annuity the Treasurer of the State shall refund and pay to the persons or person entitled to the remainder four-fifths of said tax. The said court of probate shall send to the Treasurer of the State a certificate of the date of the death of said life tenant or annuitant within ten days after the same has come to his knowledge.

§ 13. All administrators or executors shall have power to sell so much of the estate as will enable them to pay said tax. In case specific estate or property is bequeathed or devised to any person, unless the legatee or devisee shall pay to the executor the amount of the tax due thereon under the pro-

visions of section 3, the executor shall sell said property or so much thereof as may be necessary to pay said tax and the fees and expenses of said sale.

§ 14. In case of the neglect or refusal of any person interested to apply for letters of administration within thirty days after the death of any intestate, the State Treasurer may apply to the probate court having jurisdiction for the appointment of an administrator; and thereupon after hearing and public notice the said probate court shall appoint an administrator of said estate.

§ 15. The probate court having either principal or ancillary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy, or inheritance under section 3, subject to appeal as in other cases, and the State Treasurer shall represent the interests of the State in any such proceeding.

§ 16. No final settlement of the account of any executor or administrator shall be accepted or allowed by any probate court, unless it shall show and the judge of said court shall find, that all taxes imposed by the provisions of section 3 hereof upon any property or interest belonging to the estate to be settled by said account, shall have been paid, and the receipt of the State Treasurer for such tax shall be the proper voucher for such payment. Settlement of account not allowed till tax is paid.

§ 17. All transfers and alienations by deed, grant, or other conveyance, of real or personal estate to take effect upon the death of the grantor or donor, shall be testamentary gifts within the taxation purposes of section 3, and all property so conveyed shall be conveyed subject to the tax imposed by said section and upon the same principles and percentages regarding the degree of relationship; and the grantee or donee of any such estate, shall, upon the receipt thereof, pay to the State Treasurer a tax of three per cent, or one-half of one per cent of the value of such property, according to his aforesaid degree of relationship to the grantor or donor, and the executor or administrator of any such grantor or donor shall at once communicate to the State Treasurer his knowledge of any and all such conveyances. No executor, administrator, or bailee having possession of any deed, grant, conveyance, or other evidence of such transfer or alienation shall deliver the same or anything connected with the subject of such transfer or alienation until the tax aforesaid has been paid to the Treasurer of the State.

§ 18. Whenever any person or corporation shall exercise the power of appointment derived from any disposition of property made either before or after the passage of this act, all property under such appointment when made, shall be deemed to be taxable under the laws of this State in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall fail or omit to exercise the same power within the time provided therefor, in whole or in part, the passing of such property taxable under the laws of this State shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

§ 19. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed as far as they affect the provisions hereof.

**NEW YORK.**

See page 685.



## NORTH CAROLINA.

Taxes all property of nonresidents within the State, including stock in domestic corporations.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates				
		First \$25,000 above exemption	\$25,000 to \$100,000	\$100,000 to \$250,000	\$250,000 to \$500,000	In excess of \$500,000
Lineal issue, lineal ancestor, adopted child, husband or wife.	Widow, \$10,000. Each minor child, \$5,000; others, \$2,000; grandchildren divide parents' exemption.	1%	2%	3%	4%	5%
Brother or sister and their descendants.	If less than \$200 no tax.	3%	4%	5%	6%	7%
Other collaterals or strangers.	If less than \$200 no tax.	5%	6%	7%	8%	9%
Religious, charitable or educational corporations within the State.	All.					

**LAWS OF 1913, CHAPTER 203, AS AMENDED BY LAWS OF 1915, CHAPTER 285; BY THE REVENUE ACT OF 1917, AND BY CHAPTER 90, LAWS OF 1919.**

Section 6. From and after the passage of this act, all real and personal property of whatever kind and nature which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, whether the person or persons dying seized thereof be domiciled within or out of the State, or if the decedent was not a resident of this State at the time of his death, such property or any part thereof within this State, or any interest therein, or income therefrom which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, bargainor, donor or assignor, or intended to take effect, in possession or enjoyment after such death, to any person or persons or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body corporate or politic shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be and hereby is made subject to a tax for the benefit of the State, as follows, that is to say:

Subdivisions 1, 2 and 3 of section 6 prescribe the rates and exemptions of the foregoing table, and require the clerk of the Superior Court to appraise the estate and fix the tax when an estate is divided among the heirs without the appointment of a personal representative of the deceased.

Fourth. That in calculating the value of the distributive share the following deductions, and no others, shall be allowed: Debts of the decedent, taxes, including Federal estate taxes; drainage and street assessments, funeral and burial expenses, all amounts actually expended for monuments not exceeding the sum of five hundred dollars, commissions of executors and administrators and cost of administration, including reasonable attorneys' fees.

Fifth. That whenever an estate subject to the tax under this act shall be settled or divided among the heirs at law, legatees or devisees, without the qualification and appointment of a personal representative, the clerk of the Superior Court of the county wherein the estate is situated shall certify the same to the Corporation Commission, and shall also require such heirs at law,

legatees or devisees to report to him under oath the value of said real and personal estate, and shall report said valuation to the Corporation Commission. The clerk is authorized and required to cite all interested parties to appear before him and make the report herein required and pay to him the amount of the inheritance tax due upon said property.

Sixth. All advancements and gifts equal to or in excess of 5% of the decedent's estate at the time such advancements or gifts were made, and made within five years of the decedent's death, shall be *prima facie* made in contemplation of death. Any transfers or conveyances made upon consideration that was grossly inadequate within the same period shall be an inheritance to the extent that the consideration was inadequate at the time it was made.

Seventh. The words "such property or any part thereof or interest therein within this State" shall include in its meaning bonds and shares of stock in any incorporated company, incorporated in any other State or country, when such incorporated company is the owner of property in this State, and if 50% or more of its property is located in this State, and when bonds or shares of stock in any such company not incorporated in this State, and owning property in this State, are transferred by inheritance, the valuation upon which the tax shall be computed shall be the proportion of the total value of such bonds or shares which the property owned by such company in this State bears to the total property owned by such company, and the exemptions allowed shall be the proportion of exemptions allowed by this act, as related to the total value of the property of the decedent.

If the incorporated company not incorporated in this State and owning property in this State be a railroad company, the proportion upon which the tax shall be paid shall be the proportion which the miles of road of such company in this State bear to the total miles of road of such company.

The rest of subdivision 7 makes any corporation transferring stock owned by a nonresident decedent liable for the tax if the stock is above \$500, par value, and requires the State Tax Commission to furnish blank forms and enforce the penalty against such corporations.

§ 7. Provides that beneficiaries, executors, administrators can only be discharged from liability for the tax by paying it.

§ 8. All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor or vendor, unless in this act otherwise provided, and if the same are paid within six months from the date of the death of the testator, intestate, grantor, donor or vendor, a discount of two and one-half per centum shall be allowed and deducted from such taxes; if not paid within one year from the date of the death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate of six per centum per annum, to be computed from the expiration of one year from the date of the death of such testator, intestate, grantor, donor or vendor, for a period of one year, and ten per centum per annum thereafter until the same is paid. [As amended by Revenue Act of 1917.]

§ 8. (a) *Collection to be made by sheriff if not paid in two years.*

If taxes imposed by this act are not paid within two years after the death of the decedent, it shall be the duty of the clerk to certify to the sheriff the amount of tax due upon such inheritance, and the sheriff shall collect the same as other taxes, with an addition of 2½% as sheriff's fees for collecting same; and the sheriff is hereby given the same rights of levy and sale upon any property upon which the said tax is payable as is given in the machinery act for the collection of other taxes. The sheriff shall make return to the clerk of the Superior Court of all such taxes within thirty days after collection, to be accounted for by the clerk in monthly settlement with the State Auditor and Treasurer as provided by law: *Provided*, that time for payment and collection of such tax may be extended by the State Tax Commission for good reason shown. [As amended by Revenue Act of 1917.]

§ 9. Requires the executor or administrator to deduct the tax or collect it from beneficiary and gives power of sale in case of refusal of beneficiary to pay.

§ 10. Requires the court to apportion the tax between life tenants and remaindermen.

§ 11. Requires the heir to deduct the tax when a legacy is made a charge on real estate.

§ 12. Provides for receipts which must be produced on final accounting.

§ 13. Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or bonds in this State standing in the name of the decedent or in trust for a decedent, which shall be liable for the said tax, such tax shall be paid on the transfer thereof to the clerk of the court of the county where such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax.

The State Tax Commission is given authority to make appraisal of such stocks or bonds, and settlement of taxes due under this section. Exemptions shall be prorated as provided in subsection 1 of section 6 of this act, and receipt or waiver issued by the State Tax Commission shall be complete protection to any such corporation for the transfer of such stocks or bonds. [As amended by Revenue Act of 1919.]

§ 14. *Information by administrators and executors.*

Every administrator shall prepare a statement in duplicate, showing as far as can be ascertained the names of all the heirs at law and their relationship to decedent, and every executor shall prepare a like statement showing the relationship to the decedent of all legatees, distributees and devisees named in the will, and the age at the time of death of the decedent of all legatees, distributees, and devisees to whom property is bequeathed or devised for life or for a term of years, and the name of those, if any, who have died before the decedent. If any of the heirs at law, distributees and devisees are minor children of the decedent such statement shall also show the age of each of such minor children. The statement shall also contain a complete inventory of all the real property of the decedent located in this State, and of all personal property of the estate, together with an appraisal under oath of the value of each class of property embraced in the inventory, and the value of the whole, together with any deductions permitted by this statute, so far as they may be ascertained at the time of filing such statement. The statement herein provided for shall be filed within three months after the qualification of the executor or the administrator, upon blank forms to be prepared by the State Tax Commission and furnished to the clerk of the Superior Court in each county. If any administrator or executor refuses to comply with any of the requirements of this section, he shall be liable to a penalty of not more than one thousand dollars, which shall be recovered by the State Tax Commission for the use of the State. Every executor or administrator may make a tentative settlement of the inheritance tax with the clerk of the Superior Court based upon the sworn inventory provided in this section. One copy of the duplicate report herein provided to be made shall be mailed by the clerk of the Superior Court to the State Tax Commission and one copy shall be bound or copied in a book to be kept for that purpose, by the clerk of the Superior Court: *Provided*, that this section shall not apply to estates of less than two thousand dollars in value when the beneficiaries are husband or wife or children or grandchildren of the decedent.

§ 14a. Whenever the clerk of the Superior Court shall ascertain that any real estate has passed by will or by the intestate laws of this State and there shall be no executor or administrator of the deceased person the clerk shall ascertain the names of the persons taking said property and their several interests therein, and report the same to the State Tax Commission and shall cause the same to be appraised, and the clerk shall enter the same in the appraisal book herein provided for, and shall collect the tax due from the person taking such property and shall enforce payment as herein provided for as fully as if there were an administrator or executor. [As amended by Revenue Act of 1919.]

§ 15. *Supervision by State Tax Commission.*

The State Tax Commission shall have complete supervision of the enforcement of all provisions of the Inheritance Tax Act. It shall regularly employ

such attorneys, examiners or special agents as may be necessary for the reasonable carrying out of its full intent and purpose.

The rest of this section and sections 16 to 21, inclusive, make the usual provisions for the appointment of appraisers, the valuation of the estate and the collection of delinquent taxes.

**Prior Statutes:** Collateral inheritances have been taxed since 1847. Statutes for the last twenty years are as follows: Code of 1883, § 3867; L. 1897, ch. 168; L. 1901, ch. 9; L. 1903, Revenue Act, ch. 247; L. 1905, ch. 588; L. 1907, ch. 256; L. 1909, ch. 438; L. 1911, ch. 46.

## NORTH DAKOTA.

Taxes transfers of stock in domestic corporations held by nonresident decedents.

TABLE OF RATES AND EXEMPTIONS IN FORCE AFTER MARCH 25, 1919

Class or Relationship	Exemption	Above exemp- tion up to \$15,000	\$15,000 to \$30,000	\$30,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$300,000	\$300,000 to \$500,000	In excess of \$500,000
Husband or wife.....	\$10,000	} 1%	1½%	2%	2½%	3%	3½%	4%
Minor child .....	5,000							
Lineal issue, lineal ancestor, adopted or mutually acknowl- edged child or its issue.	2,000							
Brother or sister or their de- scendants, son-in-law, daugh- ter-in-law.	\$500	1½%	2¼%	3%	3¾%	4½%	5¼%	6%
Aunt or uncle and their de- scendants.	\$250	3%	4½%	6%	7½%	9%	10½%	12%
Brother or sister of grand- parents and their descendants.	None	4%	6%	8%	10%	12%	14%	16%
All others, except local chari- table, educational, etc., cor- porations, as to which, see section 4.	None	5%	7½%	10%	12½%	15%	17½%	20%

TABLE OF RATES AND EXEMPTIONS IN FORCE FROM MAY 1, 1917, TO  
MARCH 25, 1919.

CLASS OR RELATIONSHIP	Amount exempt	Rates of tax				
		Above exemption to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband or wife.....	\$10,000	1%	1½%	2%	2½%	3%
Lineal issue, lineal ancestor, adopted or mutually acknowledged child.	\$2,000					
Brother or sister or their descendants, son-in-law, daughter-in law.	\$500	1½%	2½%	3%	3½%	7½%
Aunt or uncle or their descendants....	\$250	3%	4½%	6%	7½%	9%
Brother or sister of grandparents or their descendants.	\$150	4%	6%	8%	10%	12%
All others except exempt corporations..	\$100	5%	7½%	10%	12½%	15%
Municipal corporations within the State for strictly municipal purposes, religious, charitable and educational institutions or organized by the laws of the State for such purposes within the State.	All	No tax				

TABLE OF RATES AND EXEMPTIONS FROM MARCH 15, 1913, TO MAY 1, 1917

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates				
		Above exemption up to \$100,000	\$100,000 to \$250,000	\$250,000 to \$500,000	In excess of \$500,000	
Husband or wife.....	\$20,000	1%	2%	2½%	3%	
Father, mother, lineal descendant, adopted child or its lineal descendant.	\$10,000					
		Above exemption to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Brother, sister, son-in-law, daughter-in-law.	\$500	1½%	2½%	3%	3½%	4½%
Aunt or uncle and their descendants....	None	3%	4½%	6%	7½%	9%
All others except aliens, nonresidents and charitable bequests exempted by section 24.	None	5%	6%	9%	12%	15%
Collaterals or strangers who are aliens not residing in the United States, or corporations with alien charters.	None	25% on entire legacy.				

## THE STATUTE.

CHAPTER 185, LAWS OF 1913, AS AMENDED AND RE-ENACTED BY CHAPTER 231, LAWS OF 1917, IN FORCE MAY 1, 1917, AND AGAIN AMENDED AND RE-ENACTED BY LAWS OF 1919, IN FORCE MARCH 25, 1919.

## HOUSE BILL NO. 84.

## Taxation of Transfers of Property by Will.

An Act to Amend and re-enact Chapter 231, Laws of North Dakota, 1917, Relating to the taxation of transfers of property by will, gift or by intestate law.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

Section 1. Amendment. Chapter 231, Laws of North Dakota, 1917, is hereby amended and re-enacted to read as follows:

Section 1. A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest thereon, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporations within the State, for strictly county, town or municipal purposes, and corporations of this State organized under its laws solely for religious or educational purposes which shall use the property so transferred exclusively for the purposes of their organization within the State, in the following cases, except as hereinafter provided:

(1) When the transfer is by will or by intestate laws of this State from any person dying possessed of the property while a resident of the State; provided, that no tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this State, and when the transfer of such property is subject to an inheritance or transfer tax in the State where located, and which tax has actually been paid, provided such property is not without this State temporarily, nor for the sole purpose of deposit or safe keeping; and provided, that the laws of the State where such property is located allow a like exemption in relation to such property left by a resident of that State and located in this State.

(2) When the transfer is by will or intestate law, of property within this State, and the decedent was a nonresident of the State at the time of his death; provided, that for the purposes of the tax herein imposed, the term property shall include all contracts, mortgages, shares of stock or bonds or other interest in tangible personal, or real property existing in this State, however evidenced or expressed.

(3) When the transfer is made by a resident or nonresident of property within the State or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift, made within six years prior to the death of the grantor, vendor or donor of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall be construed to have been made in contemplation of death within the meaning of this section.

(4) When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act.

(5) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and has been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act

shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(6) The tax so imposed shall be upon the clear market value of such property at the rates hereinafter prescribed, and only upon the amount in excess of the debts of such decedent, costs of administration and the exemptions hereinafter granted; providing that in computing said clear market value all inheritance taxes paid to the Federal Government shall be deducted.

§ 2. When the property or any beneficial interest therein passes by any such transfer, where the amount of the property shall exceed in value the exemption hereinafter specified and shall not exceed in value \$15,000 the tax herein imposed shall be:

(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this State, or any child to whom such decedent for not less than ten years prior to such transfer, stood in the mutually acknowledged relation of a parent, provided, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per cent of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister, or a descendant of a brother or sister of the decedent, a wife or a widow of a son, or the husband of a daughter of the decedent, at the rate of one and one-half per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

§ 3. The foregoing rates in section 2 are for convenience termed the primary rates.

When the amount of clear value of such property or interest exceeds \$15,000, the rate of tax upon such excess shall be as follows:

(1) Upon all in excess of \$15,000 and up to \$30,000 one and one-half times the primary rates.

(2) Upon all in excess of \$30,000 and up to \$50,000 two times the primary rates.

(3) Upon all in excess of \$50,000 and up to \$100,000 two and one-half times the primary rates.

(4) Upon all in excess of \$100,000 up to \$300,000 three times the primary rates.

(5) Upon all in excess of \$300,000 up to \$500,000 three and one-half times the primary rates.

(6) Upon all in excess of \$500,000 four times the primary rates.

§ 4. The following exemptions from the tax, to be taken out of the first \$15,000 are hereby allowed:

(1) All property transferred to municipal corporations within the State for strictly county, town or municipal purposes, or to corporations of this State organized under its laws solely for religious, charitable, or educational pur-

poses, which shall use the property so transferred exclusively for the purposes of their organization within the State shall be exempt.

(2) Property of the clear value of \$10,000 transferred to the husband or wife of the decedent, and \$5,000 to each minor of the decedent and \$2,000 transferred to each of the other persons described in the first sub-division of section 2 shall be exempt.

(3) Property of the clear value of \$500 transferred to each of the persons described in the second sub-division of section 2 shall be exempt.

(4) Property of the clear value of \$250 transferred to each of the persons described in the third sub-division of section 2 shall be exempt.

§ 5. All taxes imposed by this act shall be due and payable at the time of the transfer, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred until paid, and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred shall be personally liable for such tax until its payment.

§ 6. The tax shall be paid to the treasurer of the county in which the County Court is situated having jurisdiction as herein provided; and said treasurer shall make duplicate receipts of such payment, one of which he shall immediately send to the State Treasurer, whose duty it shall be to charge the county treasurer so receiving the tax with the amount thereof, and the other receipt shall be delivered to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his account.

§ 7. But no executor, administrator, or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipts.

§ 8. If such tax is not paid within one year from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged.

§ 9. Every executor, administrator, or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor, or trustee, having in charge or in trust any legacy or property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraisal value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act to any person until he shall have collected the tax thereon. If any legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such real property until paid. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor, or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting to him to make an apportionment if the case require it, of the sum to be paid into the hands of such legatees, and for such further order relative thereto as the case may require.

§ 10. If any debt shall be proved against the estate of the decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by the order of the County Court having jurisdiction thereof on notice of the State Treasurer to refund the amount of such debts or any part thereof, an equitable propor-



tion of the tax shall be repaid to such person by the executor, administrator, trustee or officer to whom said tax has been paid.

§ 11. When any amount of said tax shall have been paid erroneously into the State Treasury, it shall be lawful for the State Treasurer upon receiving a transcript from the County Court record showing the facts to refund the amount of such erroneous or illegal payment to the executor, administrator, trustee, person or persons, who have paid any such tax in error, from the treasury; or the said State Treasurer may order, direct, and allow the treasurer of any county to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody to the credit of such taxes, and credit him with the same in his account rendered to the State Treasurer under this act. Provided, however, that all applications for such refunding of erroneous taxes shall be made within one year from the payment thereof, or within one year after the reversal or modification of the order fixing such tax.

§ 12. If a testator bequeaths property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to any amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed, above the amount of commissions or allowances prescribed by law in similar cases, shall be taxable by this act.

§ 13. Every executor or administrator of the estate of a nonresident decedent shall file with the State Tax Commissioner a list of the property owned by him in this State; provided, that said list need not be filed in cases in which ancillary probate proceedings are instituted in the courts of this State for the purpose of probating said estate.

§ 13a. Said list shall be in the form of an affidavit and shall be sworn to by the executor or administrator of said estate, and shall contain a detailed description of the property and the value thereof, owned by said nonresident decedent in this State as of the date of his death. If such property consists in whole or in part of mortgages secured upon real or personal property situated in this State, said list shall enumerate each mortgage separately, stating the name and postoffice address of the mortgagor, the county in which the mortgagor resides, the county in which the mortgaged property is situated, the date of the execution of said mortgage, the amount for which said mortgage was given, the rate of interest and the amount due on said mortgage at the time of the death of the decedent, and in addition, if said mortgaged property consists of real estate, the legal description of the same. If such property consists in whole or in part of the shares of stock or bonds of any corporation organized, doing business or owning property in this State, wherever such corporation has been created or organized, said list shall enumerate each corporation issuing any of said shares of stock or bonds, giving in each case the name of the corporation and of the State or country in which it was created or organized, and shall enumerate under each the bonds and shares of stock issued by it and owned by the decedent, giving the par and the market value of said shares of stock. If such property consists in whole or in part of the debt of or interest in any property existing within this State in any other manner, the said list shall contain the name of the debtor, the amount of the debt or other interest in such property as of the date of the death of the decedent and the nature of such debt or other interest. Said list shall be filed with the State Tax Commissioner within thirty days after the issuing of the letters testamentary or letters of administration, as the case may be. Upon receipt of said list in proper form the Commissioner shall proceed to determine the amount of inheritance tax, if any, due the State of North Dakota, from said estate, and upon such determination shall notify the administrator or executor of said estate immediately whether the same is taxable or exempt, and if taxable, the amount for which said estate is liable, and the manner in which the tax shall be paid.

§ 13b. The State Treasurer shall, upon receipt of the total amount of the tax due from said estate, issue to the administrator or executor paying the same, his receipt therefor, and in addition to said receipt shall at the same time issue to said administrator or executor a certified statement, bearing the

seal of his office, to the effect that the full amount of the inheritance tax due from the said estate to the State of North Dakota has been paid. Where the total amount of the tax is paid to the State, the State Treasurer shall pay into the county treasury of the county in which the estate was probated twenty-five per cent of the amount received; provided, that in a case where the estate is settled outside of the State, or the property thereof exists in more than one county, the total amount of the tax shall be paid into the State treasury.

§ 13c. The State Tax Commissioner shall, upon determining that any such estate is exempt from the payment of any inheritance tax to the State of North Dakota, execute a certified statement of such fact, and send it to the executor or administrator of said estate.

§ 14. No register of deeds shall cause to be recorded or filed in this office any satisfaction or assignment of any real or personal property mortgage, executed by a foreign executor or administrator of any estate, unless said satisfaction or assignment shall be accompanied for his inspection either by the certified statement of the State Treasurer that the inheritance tax due the State of North Dakota from such estate has been paid, or by the certified statement of the Tax Commissioner that said estate has been determined to be exempt from the payment of any inheritance tax to the State of North Dakota; provided, that, in his discretion, in case where in his opinion strict compliance with the provisions of this section would impose an undue burden upon the mortgagor, the Tax Commissioner may authorize the recording of such satisfaction before the tax has been paid.

§ 14a. No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in their possession or under their control securities, deposits or other assets belonging to the estate of any nonresident decedent shall deliver or transfer any such assets to the administrator or executor of such estate, or to any other person or persons upon the order of said administrator or executor, unless said administrator or executor or such other person holding such order for the transfer or delivery of such assets shall submit to said safe deposit company, trust company, corporation, bank or other institution, person or persons having in their possession or under their control such assets belonging to the estate of the decedent, either the certified statement of the State Treasurer to the effect that the inheritance tax due the State of North Dakota from said estate is exempt from the payment of such tax, or the certificate of the Tax Commissioner that no tax is due thereon.

§ 14b. Any register of deeds, safe deposit company, trust company, corporation, bank or other institution, person or persons, violating any of the provisions of this act shall be liable to the State for the amount of the tax due in each case.

§ 15. Where stocks, bonds, mortgages or other securities of corporations, doing business or owning property partly within and partly without the State, shall have been transferred by a resident or a nonresident decedent, the tax shall be upon such proportion of the value thereof as the property or business of such corporation in this State bears to its total property or business within and without this State.

§ 16. If any stocks, bonds, mortgages or other securities of a holding company or other corporation are based upon or represent in whole or in part the value of any stocks, bonds, mortgages, or other securities of any corporation organized, doing business or owning property in this State, either directly or indirectly, the transfer of such stocks, bonds, mortgages or other securities of such holding company or other corporation shall be subject to the inheritance tax in the proportion which the business or property of such corporation organized or doing business in this State bears to its total property or business within the State or elsewhere.

§ 17. Whenever the estate of a decedent consists of property which is located within this State and also property which is located without this State, there shall be deducted from the value of such property within this State, only that proportion of the debts, expenses of administration and exemptions which equals the proportion that the North Dakota property bears to the entire property of the estate.

§ 18. Authorizes the State Tax Commissioner to require reports from corporations both domestic and foreign.

§ 19. Provides that corporations violating provisions of the act may forfeit charter or license to do business within the State.

§ 20. Gives the County Court having jurisdiction to grant letters jurisdiction of tax proceedings.

§ 21. Requires an inventory to be filed with petition for ancillary letters.

§ 22. Gives the County Court at the seat of government jurisdiction in non-resident cases.

§ 23. Authorizes the County Court to appoint appraisers.

§ 24. Provides for the usual notice by appraisers and proceedings before him.

§ 25. Requires the appraiser to report to the County Court, which thereupon assesses the tax.

§ 26. Provides for notice of the proceedings before the County Court.

§ 27. Provides for computing value of life estates and remainders on American experience tables at 6%.

§ 28. Provides that contingent incumbrances upon an estate shall be ignored, but gives a refund if they ultimately accrue, as provided in section 10.

§ 29. Where any property shall, after the passage of this act, be transferred subject to any charge, estate, or interest determinable by the death of any person or at any period ascertainable only by reference to death, the increase or benefit accruing to any person or corporation upon the extinction or determination of such charge, estate or interest shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase of benefit from the person from whom the title to their respective estates or interests is derived.

§ 30. When property heretofore or hereafter is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such transfer at the lowest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act; and such tax so imposed shall be due and payable forthwith out of the property transferred; provided, however, that on the happening of any contingency or condition whereby the said property or any part thereof is transferred to a person or corporation which under the provisions of this act is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as herein provided.

§ 31. Provides for the taxation of contingent remainders where they accrue at full undiminished value.

§ 32. Provides form of taxing order to be entered by County Court.

§ 33. Provides for rehearing before County Court.

§§ 34, 35, 36. Provide for collection of delinquent taxes.

§ 37. Provides for investigations by the public administrator.

§§ 38, 39. Prescribe the duties and powers of the State Tax Commissioner.

§§ 40 to 45. Regulate details of administration.

§ 46. The words "estate" and "property," as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor, passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the State. The word "transfer" as used in this act shall be taken to include all the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein prescribed. The word "decendent," as used in this act, shall include the testator, intestate, grantor, bargainor, vendor, or donor. The words "county treasurer," "public administrator," and "attorney," as used in this act, shall be taken to mean the

treasurer, public administrator or attorney of the County Court having jurisdiction. All money invested in this State, including the stock or bonds of any corporation, shall be deemed to be property within the jurisdiction of the State.

§ 47. Provides for oaths of witnesses.

§ 48. Is a saving clause as to former acts repealed.

§ 49. Repeals sections of former statutes.

**Prior Statutes:** Ch. 171, L. 1903; ch. 10, L. 1905; ch. 185, L. 1913; ch. 231, L. 1917.

## OHIO.

Taxes property of nonresidents within the State, including transfers of stock in domestic corporations where death occurred after June 5, 1919.

Under the General Code of 1910, as amended by act of 1913, page 463, Ohio taxed only collateral transfers at the flat rate of 5%.

The present Inheritance Tax Law took effect June 5, 1919, and imposes the following rates and exemptions:

Class or Relationship	Ex-emption	Above exemption up to \$25,000	\$25,000 to \$100,000	\$100,000 to \$200,000	On all above \$200,000
Wife or minor child.....	\$5,000	1%	2%	3%	4%
Father, mother, husband, adult child, legally adopted child, lineal descendants.	\$3,500	1%	2%	3%	4%
Brother, sister, niece, nephew, wife or widow of a son, son-in-law, mutually acknowledged child.	\$500	5%	6%	7%	8%
All others. (Except municipal, charitable or educational corporations within the State.)	None	7%	8%	9%	10%

## THE STATUTE.

Ohio is now in line with the majority of her sister States. Her new inheritance tax statute is in full as follows:

Section 1. The second subdivision of chapter 2, title 1, part 2d, of the General Code heretofore designated "Collateral Inheritances," and consisting of sections 5331 to 5349 of the General Code, shall be hereafter known and designated by the title "Inheritances."

§ 5331. As used in this subdivision of this chapter:

1. The words "estate" and "property" include everything capable of ownership, or any interest therein or income therefrom, whether tangible or intangible, and, except as to real estate, whether within or without this State, which passes to any one person, institution or corporation, from any one person, whether by a single succession or not.

2. "Succession" means the passing of property in possession or enjoyment, present or future.

3. "Within this State," when predicated of tangible property, means physically located within this State; when predicated of intangible property, that the succession thereto is, for any purpose, subject to, or governed by the law of this State.

4. "Decedent" includes a testator, intestate, grantor, assignor, vendor or donor.

5. "Contemplation of death" means that expectation of death which actuates the mind of a person on the execution of his will.

§ 5332. A tax is hereby levied upon the succession to any property passing,

in trust or otherwise, to or for the use of a person, institution or corporation, in the following cases:

1. When the succession is by will or by the intestate laws of this State from a person who was a resident of this State at the time of his death.

2. When the succession is by will or by the intestate laws of this State or another State or country, to property within this State, from a person who was not a resident of this State at the time of his death.

3. When the succession is to property from a resident, or to property within this State from a nonresident, by deed, grant, sale, assignment of gift, made without a valuable consideration substantially equivalent in money or money's worth to the full value of such property:

(a) In contemplation of the death of the grantor, vendor, assignor, or donor, or

(b) Intended to take effect in possession or enjoyment at or after such death.

4. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property heretofore or hereafter made, such appointment when made shall be deemed a succession taxable under the provisions of this subdivision of this chapter in the same manner as if the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by said donee by will; and whenever any such person or corporation possessing such power of appointment shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a succession taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as if the persons, institutions or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise the same, taking effect at the time of such omission or failure.

5. Whenever property is held by two or more persons jointly, so that upon the death of one of them the survivor or survivors have a right to the immediate ownership or possession and enjoyment of the whole property, the accrual of such right by the death of one of them shall be deemed a succession taxable under the provisions of this subdivision of this chapter in the same manner as if the enhanced value of the whole property belonged absolutely to the deceased person, and had been by him bequeathed to the survivor or survivors by will.

6. When a decedent appoints one or more executors or trustees, and instead of their lawful allowance makes a bequeath or devise of property to them, which would otherwise be liable to such taxes, or appoints them as residuary legatees, and such bequest, devise or residuary legacy exceeds what would be a reasonable compensation for their services, such excess shall be a succession and liable to such tax, and the probate court having jurisdiction of their accounts shall fix such compensation.

7. When any property shall pass subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person, institution or corporation, on the extinction and determination of such charge, estate or interest, shall be deemed a succession taxable under the provisions of this subdivision of this chapter, in the same manner as if the person, institution or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

Such tax shall be upon the excess of the actual market value of such property over and above the exemptions made and at the rates prescribed in this subdivision of this chapter.

§ 5333. If the succession to property which is not within this State is locally subject in another State or country to a tax of like character and amount to that hereby levied, and if such tax be actually paid or guaranteed or secured in accordance with law in such other state or country, such succes-

sion shall not be subject to the tax hereby levied; if locally subject in any state or country to a tax of like character but of less amount than that hereby levied and such tax be actually paid or guaranteed or secured, as aforesaid, such succession shall be taxable under this subdivision of this chapter to the extent of the difference between the taxes actually paid, guaranteed or secured, and the amount for which such succession would otherwise be taxable hereunder.

§ 5334. The succession to any property passing to or for the use of the State of Ohio, or to or for the use of a municipal corporation or other political subdivision thereof for exclusively public purposes, or public institutions of learning, or to or for the use of an institution for purposes only of public charity, carried on in whole or in substantial part within this State, shall not be subject to the provisions of the next preceding section. Successions passing to other persons shall be subject to the provisions of said section to the extent only of the value of the property transferred above the following exemptions:

1. When the property passes to or for the use of the wife or a child of the decedent who is a minor at the death of the decedent, the exemptions shall be five thousand dollars.

2. When the property passes to or for the use of the father, mother, husband, adult child, adopted child, or person recognized as an adopted child and made a legal heir under the provisions of a statute of this or any other State or country, or the lineal descendants thereof, or a lineal descendant of an adopted child, the exemption shall be three thousand five hundred dollars.

3. When the property passes to or for the use of a brother, or sister, niece, nephew, the wife or widow of a son, the husband of a daughter of the decedent, or to any child to whom the decedent, for not less than ten years prior to the succession stood in the mutually acknowledged relation of a parent, the exemption shall be five hundred dollars.

§ 5335. The rates at which such tax is levied are as follows:

1. On successions passing to any person mentioned in the first and second sub-paragraphs of the preceding section:

(a) 1% on the excess of the value of the property over the exemptions up to and including the sum of twenty-five thousand dollars.

(b) 2% on the next seventy-five thousand dollars, or any part thereof;

(c) 3% on the next one hundred thousand dollars, or any part thereof;

(d) 4% on the amount representing the balance of the value of each individual succession.

2. On successions passing to any person mentioned in the third sub-paragraph of the preceding section;

(a) 5% on the excess of the value of the property over the exemptions up to and including twenty-five thousand dollars;

(b) 6% on the next seventy-five thousand dollars, or any part thereof;

(c) 7% on the next one hundred thousand dollars, or any part thereof;

(d) 8% on the amount representing the balance of the value of each individual succession.

3. On all successions passing to persons other than those hereinbefore mentioned, or to institutions or corporations:

(a) 7% on the value of the property up to and including the sum of twenty-five thousand dollars;

(b) 8% on the next seventy-five thousand dollars, or any part thereof;

(c) 9% on the next one hundred thousand dollars, or any part thereof;

(d) 10% on the amount representing the balance of the value of each individual succession.

§ 5336. Taxes levied under this subdivision of this chapter shall be due and payable at the time of the succession, except as herein otherwise provided, but in no case prior to the death of the decedent. Taxes upon the succession of any estate or property, or interest therein limited, dependent or determinable upon the happening of any contingency or future event, and not vested at the death of the decedent, by reason of which the actual market value thereof cannot be ascertained at the time of such death, as provided in this subdivision of this chapter, shall accrue and become due and payable

when the persons or corporations then beneficially entitled thereto shall come into actual possession or enjoyment thereof. Such taxes shall be and remain a lien upon the property passing until paid, and the successor and the executors, of the general estate of the decedent, and the trustees of such property shall be personally liable for all such taxes, with interest as hereinafter provided, until they shall have been paid as hereinafter directed. Such an administrator, executor or trustee, having in charge or in trust for distribution any property the succession to which is subject to such taxes, shall deduct the taxes therefrom, or collect the same from the person entitled thereto. He shall not deliver, or be compelled to deliver, any specific legacy or property, the succession to which is subject to said taxes, to any person, until he shall have collected the taxes thereon. He may sell so much of the estate of the decedent as will enable him to pay said taxes in like manner as he would be empowered to do for the payment of the debts of the decedent.

§ 5337. If a legacy subject to such taxes is charged upon or payable out of real estate, the heir or devisee, before paying it, shall deduct the taxes therefrom and pay such taxes to the executor, administrator or trustee, and the taxes shall remain a charge upon the real estate until it is paid; and the payment thereof shall be enforced by the executor, administrator or trustee, in like manner as the payment of the legacy itself may be enforced, or by the prosecuting attorney as provided in this subdivision of this chapter. If such legacy shall be given in money to a person for a limited period, such administrator, executor or trustee shall retain the tax on the whole amount; and if it be not in money he shall make an application to the court having jurisdiction of his accounts to make an ascertainment, if the case require it, of the sum to be paid into his hands by such legatee on account of the taxes, and for such further order as the case may require.

§ 5338. Taxes levied by this subdivision of this chapter shall be paid to the treasurer of the county in which the court having jurisdiction of proceedings under this subdivision of this chapter is held by the person or persons charged with the payment thereof. If such taxes are not paid within one year after the accrual thereof, interest at the rate of 8% per annum shall thereafter be charged and collected thereon; unless by reason of claims made upon the estate necessary litigation, or other unavoidable causes of delay, such taxes cannot be determined and paid as hereinbefore provided, in which case interest at the rate of 5% per annum shall be charged upon such taxes from the accrual thereof until the cause of such delay is removed, after which 8% shall be charged. If such taxes are paid before the expiration of one year after the accrual thereof, a discount of 1% per month for each full month that payment has been made prior to the expiration of the year, shall be allowed on the amount of such taxes.

§ 5339. If any debts shall be proven against the general estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the probate court having jurisdiction, on notice of the Tax Commission of Ohio, to refund the amount of such debts, or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer; or if such tax has been paid to the county treasurer, he shall, on the warrant of the county auditor, refund out of the funds in his hands or custody to the credit of inheritance taxes, such equitable proportion of the tax, without interest, and be credited therewith in his accounts. If after the payment of any tax, in pursuance of an order fixing such tax, made by the probate court having jurisdiction, such order be modified or reversed on due notice to the Tax Commission of Ohio, the said commission shall, unless further proceedings on appeal or in error are pending or contemplated by order direct the county auditor to refund such amount in the same manner; but no such application for such refunder shall be made after one year from such reversal or modification, by the highest court to which error may be prosecuted. The fees theretofore allowed upon such over-payment shall be adjusted in accordance

with such refunder. Where it shall be shown to the satisfaction of the probate court that deductions for debts were erroneously allowed, such probate court may enter an order assessing the taxes upon the amount wrongfully or erroneously deducted.

§ 5340. The probate court of any county of the State having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent, on the succession of whose property a tax is levied by this subdivision of this chapter, or to appoint a trustee of such estate, or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine the questions arising under the provisions of this subdivision of this chapter, and to do any act in relation thereto authorized by law to be done by a probate court in other matters or proceedings coming within its jurisdiction; and if two or more probate courts shall be entitled to exercise such jurisdiction, the court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other probate court. Such jurisdiction shall exist not only with respect to successions in which the jurisdiction of such court would otherwise be invoked, but shall extend to all cases covered by this act, to the end that succession *inter vivos*, taxable under the provisions of this subdivision of this chapter, may be reached thereby.

§ 5341. The county auditor shall be the inheritance tax appraiser for his county. The probate court, upon its own motion may, or upon the application of any interested person, including the Tax Commission of Ohio, shall by order direct the county auditor to fix the actual market value of any property the succession to which is subject to the tax levied by this subdivision of this chapter. Such auditor shall forthwith give notice by mail to all persons known to him to have a claim or interest in the property to be appraised, including the Tax Commission of Ohio, and to such persons as the probate court may by order direct, of the time and place when he will appraise such property. He shall at such time and place appraise the same at its actual market value as of the date of the accrual of the tax, except as hereinafter provided, and subject to the rules hereinafter prescribed. Such county auditor for such purpose is hereby authorized to issue subpoenas and to compel the attendance of witnesses and the production of books and papers before him, and to examine such witnesses under oath concerning such property, the value thereof, and the nature and circumstances of the succession. Disobedience of such subpoena, or refusal to testify on such examination shall be punished as a contempt of the probate court. The county auditor shall report his findings in writing, together with the depositions of the witnesses examined, and such other facts in relation thereto as the probate court may order. Such report shall be made in duplicate; one copy thereof shall be filed with the probate court, and the other with the Tax Commission of Ohio.

The fees of the sheriff or other officer, serving such subpoenas, and the actual and necessary traveling and other expenses incurred by the county auditor in making the appraisement shall be certified by the county auditor on such report. If the probate judge finds such fees and expenses to be correct, he shall allow such fees, and so much of such expenses as he may find to have been reasonable, having regard to the amount of the State's share of the taxes, and certify the amount so allowed for each on the order fixing the taxes. For the purpose of this and succeeding sections of this subdivision of this chapter relating to the assessment of the tax, the entire estate of a decedent, though passing to several persons, institutions or corporations, shall be the subject of inquiry in a single proceeding.

§ 5342. The value of a future or limited estate, income, interest or annuity for any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the Superintendent of Insurance in ascertaining the value of annuities for the determination of liabilities of life insurance companies, except that the rate of interest shall be 5% per annum. The Superintendent of Insurance shall, without a fee, on the application of any probate court or of any county auditor, determine the value of any such estate, income, interest or annuity, upon the facts contained in any such application, and other facts to him submitted by such court or auditor



and certify the same in duplicate to such court or auditor, and his certificate thereof shall be conclusive evidence that the method of computation therein is correct.

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled, no allowance shall be made on account of any contingent encumbrance thereon, nor on account of any contingency upon the happening of which the estate, or some part thereof, or interest therein, may be abridged, defeated or diminished; but in the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgement, defeat or diminution of such estate, or interest therein, as aforesaid, a refunder shall be made in the manner provided by section 5339 of the General Code, to the person properly entitled thereto of a proportionate amount of such tax on account of the encumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate enjoyed.

§ 5343. When, upon any succession, the rights, interests, or estates of the successors are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such successions at the highest rate which, on the happening of any such contingencies or conditions, would be possible under the provisions of this subdivision of this chapter, and such taxes shall be due and payable forthwith out of the property passing, and the probate court shall enter a temporary order determining the amount of such taxes in accordance with this section; but on the happening of any contingency whereby the said property, or any part thereof, passes so that such ultimate succession would be exempt from taxation under the provisions of this subdivision of this chapter, or taxable at a rate less than that so imposed and paid, the successor shall be entitled to a refunder of the difference between the amount so paid and the amount payable on the ultimate succession under the provisions of this chapter, without interest; and the executor or trustees shall immediately upon the happening of such contingencies or conditions apply to the probate court of the proper county, upon a verified petition setting forth all the facts, and giving at least ten days' notice by mail to all interested parties, for an order modifying the temporary order of said probate court so as to provide for a final assessment and determination of the taxes in accordance with such ultimate succession. Such refunder shall be made in the manner provided by section 5339 of the General Code.

§ 5344. Estates in expectancy which are contingent or defeasible, and in which proceedings for the determination of the taxes have not been taken, or have been held in abeyance, shall be appraised at their full undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for the purpose of this subdivision of this chapter, upon which such estate in expectancy may have been limited. An estate for life or for years which can be divested by the act or omission of the legatee, or devisee, shall be appraised and taxed as if there were no possibility of any such divesting.

§ 5345. From the report of appraisal and other evidence relating to any such estate before the probate court, such court shall forthwith upon the filing of such report, by order entered upon the journal thereof, find and determine, as of course, the actual market value of all estates, the amount of taxes to which the succession or successions thereto are liable, the successors and legal representatives liable therefor; and the townships or municipal corporations in which the same originated. Provided, however, that in case no application for appraisement is made the probate court may make and enter such findings and determinations without such appraisement. Thereupon the judge of such court shall immediately give notice of such order to all persons known to be interested therein, and shall immediately forward a copy thereof to the Tax Commission of Ohio, together with copies of all orders entered by him in relation to or affecting in any way the taxes on any such

estate, including orders of exemption. If it shall appear at any stage of the proceedings that any of such persons known to be interested in the estate is an infant or of unsound mind, the probate court may if the interest of such person is presently involved and is adverse to that of any of the other persons interested therein, exercise the powers provided for in sections 11249 and 11253, inclusive, of the General Code.

§ 5346. The Tax Commission of Ohio, or any person dissatisfied with the appraisement and determination of taxes, may file exceptions thereto in writing with the probate court within sixty days from the entry of the order, stating the grounds upon which such exceptions are taken. The probate court shall thereupon by order fix a time not less than ten days thereafter for the hearing of such exceptions, and shall give such notice thereof as it may deem necessary; provided, that a copy of such notice and of such exceptions shall be forthwith mailed to the Tax Commission and the county auditor. Upon the hearing of such exceptions, said court may make such order as to it may seem just and proper in the premises. No costs shall be allowed by the probate court on such exceptions.

§ 5347. At the expiration of such period of sixty days if no exceptions be filed, or at any time within such period, on the application of all parties, including the Tax Commission of Ohio, the probate judge shall make and certify to the county auditor a copy of the order provided for in section 5345 of the General Code. If such exceptions are filed within such period the probate judge shall, within five days after the entry of the final order, make and certify such copy of the original finding and determination, together with any modifications thereof ordered upon the hearing of such exceptions.

The county auditor shall thereupon, on a form to be prescribed for him by the auditor of the State, make a charge based upon such order and certify a duplicate thereof to the county treasurer, who shall collect the taxes so charged.

§ 5348. An appeal may be taken by any party, including the Tax Commission of Ohio, from the final order of the probate court under section 5346 of the General Code in the manner provided by law for appeals from orders of the probate court in other cases. An appeal to the Tax Commission of Ohio may be perfected in the manner provided by section 11209 of the General Code.

§ 2624-1 On all inheritance tax moneys collected by the county treasurer, the county auditor on settlement semi-annually with the auditor of State shall be allowed as compensation for his services under the inheritance tax law the following percentages:

3% on the first fifty thousand dollars; 2% on the next fifty thousand dollars, and one-half of 1% on all additional sums. Such percentages shall be computed upon the amount collected in a calendar year, and shall be for the use of the fee fund of the county auditor.

§ 2685-1 On settlement semi-annually with the county auditor, the county treasurer shall be allowed as fees on all moneys collected by him on inheritance tax duplicates the following percentages: 1% on the first fifty thousand dollars, five-tenths of 1% on the next fifty thousand dollars, and one-tenth of 1% on all additional sums. Such percentages shall be computed upon the amount collected in the calendar year and shall be for the use of the fee fund of the county treasurer.

§ 5348-1. Upon the payment to the county treasurer of any tax due under this subdivision of this chapter, such treasurer shall issue a receipt therefor in triplicate. One copy thereof he shall deliver to the person paying such taxes; and the original and one copy thereof he shall immediately send to the auditor of State who shall certify the original and immediately transmit it to the judge of the court fixing the tax. An executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such taxes, nor shall the estate under his control be distributed, unless such certified receipt shall have been filed with the court. Any person shall, upon the payment of ten cents to the county treasurer issuing such receipt,

be entitled to a duplicate thereof, to be signed and certified in the same manner as the original.

§ 5348-2. No corporation organized or existing under the laws of this State, shall transfer on its books or issue a new certificate for any share or shares of its capital stock belonging to or standing in the name of a decedent or in trust for a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, without the written consent of the Tax Commission of Ohio. No safe deposit company, trust company, corporation, bank or other institution, person or persons, having in possession or in control or custody, in whole or in part, securities, deposits, assets or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interest in, such safe deposit company, trust company, corporation, bank or other institution, shall deliver or transfer the same to any person whatsoever whether in a representative capacity or not, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay any taxes or interest which would thereafter be assessed thereon under this subdivision of this chapter, and unless notice of the time and place of such delivery or transfer be served upon the Tax Commission of Ohio and the county auditor at least ten days prior to such delivery or transfer; but the Tax Commission of Ohio may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons, from the obligation to give such notice or to retain such portion. The Tax Commission or the county auditor, personally or by representatives, may examine such securities, deposits or other assets at the time of such delivery or otherwise. Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons, liable for the amount of the taxes and interest due under this subdivision of this chapter on the succession of such securities, deposits, assets or property. Such liability may be enforced by action brought by the county treasurer in the name of the State in any court of competent jurisdiction.

§ 5348-3. If, after the expiration of eighteen months from the accrual of any tax under this subdivision of this chapter, such tax shall remain unpaid, the auditor of State shall notify the prosecuting attorney of the proper county, in writing, of such failure or neglect. If the determination of the tax has been delayed for more than one year after the accrual thereof such notice may be issued at any time after six months from the date of the order determining such tax. Such prosecuting attorney shall thereupon apply to the probate judge in the name of the county auditor on behalf of the State for a transcript of the order fixing the tax. Such transcript shall be filed in the office of the clerk of the common pleas court of the county, and the same proceedings shall be had with respect thereto as are provided by section 11659 of the General Code with respect to transcripts of judgments rendered by justices of the peace and mayors, except that the prosecuting attorney shall not be required to pay the costs thereof accruing at the time of filing the same. Thereupon the same effect shall be given to such transcript for all purposes as is given to such transcripts of judgments of justices of the peace or mayors filed in like manner. Provided, however, that nothing in this section shall be construed to affect the date of the lien of such taxes on the property passing, nor to divest such lien before the payment of such tax in the event of failure to sue out execution within the period prescribed by section 11663 of the General Code.

§ 5384-4. The prosecuting attorney shall represent the county auditor of his county in his capacity as inheritance tax appraiser when called upon by him for that purpose. He shall also represent the interests of the State in any and all proceedings under this subdivision of this chapter. The Attorney-General shall, when requested by the Tax Commission in writing, appear for the State in any such proceeding.

§ 5348-5. The county auditor may, and when directed by the Tax Commis-

sion of Ohio, shall appoint such number of deputies as the Tax Commission of Ohio may prescribe for him, who shall be qualified to assist him in the performance of his duties as inheritance tax appraiser under the provisions of this subdivision of this chapter.

§ 5348-6. The Tax Commission of Ohio may designate such of its examiners, experts, accountants and other assistants as it may deem necessary for the purpose of aiding in the administration of the provisions of this subdivision of this chapter; and such provisions shall be deemed and held to be a law which the Tax Commission is required to administer for the purposes of sections 1465-9, and 1465-12 to 1465-30, inclusive, section 1465-32, and section 1465-34 of the General Code. It shall be the duty of the Tax Commission of Ohio in the administration of this subdivision of this chapter to see that the proceedings provided for herein shall be instituted and carried to determination in all cases in which a tax is due hereunder.

§ 5348-7. Each probate judge shall keep a book, the form thereof shall be prescribed by the auditor of State which shall be a public record, and in which such probate judge shall enter the name of every decedent upon whose estate an application to him has been made for an issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of said decedent, the estimated value of his real and personal property, the names, places of residence and relationship to him of his heirs at law, the names and places of residence of the legatees or devisees in any will of any such decedent, the amount of each legacy, and the estimated value of any real property devised therein, and to whom devised. Such entry shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The probate judge shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by the county auditor under this subdivision of this chapter, and the value of annuities, life estates, terms of years and other property of said decedent, or given by him in his will or otherwise, as fixed by the probate court, and the taxes assessed thereon, and the township or municipal corporation in which the same originated, and the amounts of any receipts for payment of any taxes on the estate of such decedent under this subdivision of this chapter, filed with him. The auditor of State shall also prescribe forms for the reports to be made by each probate judge and county auditor, which shall correspond with the entries to be made in such book.

§ 5348-8. Each probate judge shall, at the time the county auditor makes his semi-annual settlement with the auditor of the State, make a report, upon the form prescribed by the auditor of State, containing all the matters required to be entered on such book, which shall be immediately forwarded to the auditor of State. The county recorder of each county in the State shall, at the same time make reports containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made in contemplation of death, or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, of the description of the property transferred, which shall be immediately forwarded to the Tax Commission of Ohio.

§ 5348-9. The county treasurer shall keep an account showing the amount of all taxes and interest by him received under the provisions of this subdivision of this chapter. On the twenty-fifth day of February and the twentieth day of August of each year he shall settle with the county auditor for all such taxes and interest so received at the time of making such settlement, not included in any preceding settlement, showing for what estate, and by whom and when paid. At each such settlement the auditor shall allow to the treasurer and himself on the moneys so collected and accounted for by him, their respective fees, at the percentages allowed by law. The correctness thereof, together with a statement of the fees allowed at such settlement and

the fees and expenses allowed to the probate judge and other officers under this subdivision of this chapter shall be certified by the county auditor.

§ 5348-10. Such fees as are allowed by law to the probate judge for services performed under the provisions of this subdivision of this chapter, shall be fixed in each case and certified by him on the order fixing the taxes, together with the fees of the sheriff or other officers and the expenses of the county auditor. The county auditor shall allow such fees and expenses out of said taxes when paid and credit the same to such fee funds, and draw his warrants on the treasurer in favor of the officers personally entitled thereto, payable from such taxes, as the case may require.

§ 5348-11. 50% of the gross amount of any taxes levied and paid under the provisions of this subdivision of this chapter shall be for the use of the municipal corporation or township in which the tax originates, and shall be credited, one-half to the sinking fund, if any, of such municipal corporation or township, and the residue to the general revenue fund thereof; the remainder of such taxes, after deducting the fees and costs charged against the proceeds thereof under this subdivision of this chapter, shall be for the use of the State, and shall be paid into the State treasury to the credit of the general revenue fund therein.

§ 5348-12. At each semi-annual settlement provided for under this subdivision of this chapter, the county auditor shall certify to the auditor of any other county in which may be located in whole or in part, any municipal corporation or township, to which any part of the taxes collected under this subdivision of this chapter, and not previously accounted for, is due, a statement of the amount of such taxes due to each municipal corporation or township in such county entitled to share in the distribution thereof. The amount respectively due upon such settlement to each such municipal corporation or township, and to each municipality and township in the county in which the taxes are collected shall be paid upon the warrant of the county auditor to the treasurer or other proper officer of such municipal corporation or township. The amount of any refunder chargeable against any such municipal corporation or township at the time of making such settlement, shall be adjusted in determining the amount due to such municipal corporation or township at such settlement; provided, however, that if the municipal corporation or township against which such refunder is chargeable is not entitled to share in the fund to be distributed at such settlement, the county auditor shall draw his warrant for the amount thereof in favor of the county treasurer payable from any undivided general taxes in the possession of such treasurer, unless such municipal corporation or township is located in another county, in which event the county auditor shall issue a certificate for such amount to the auditor of the proper county, who shall draw a like warrant therefor payable from any undivided general taxes in the possession of the treasurer of such county; and in either case at the next semi-annual settlement of such undivided general taxes, the amount of such warrant shall be deducted from the distribution of taxes of such municipal corporation or township and charged against the proceeds of levies for the general revenue fund of such municipal corporation or township.

§ 5348-13. When the property passing is real estate or tangible personal property within this State the tax on the succession thereto shall be deemed to have originated in the municipal corporation or township in which such property is physically located. In case of real estate located in more than one municipal corporation or township the tax on the succession thereto, or to any interest therein, shall be apportioned between the municipal corporation or townships in which it is located in the proportions in which the tract is assessed for general property taxation in such townships or municipal corporations respectively.

§ 5348-14. The tax on the succession to intangible property or tangible personal property not within the State from a resident of this State shall be deemed to have originated in the municipal corporation or township in which the decedent resided.

The municipal corporation or township in which the tax on the succession to

the intangible property of a non-resident accruing under the provisions of this subdivision of this chapter, shall be deemed to have originated, shall be determined as follows:

1. In the case of shares of stock in a corporation organized or existing under the laws of this State, such taxes shall be deemed to have originated in the municipal corporation or township in which such corporation has its principal place of business in this State.

2. In case of bonds, notes, or other securities or assets, in the possession or in the control or custody of a corporation, institution or person in this State, such taxes shall be deemed to have originated in the municipal corporation or township in which such corporation, institution or person had the same in possession, control or custody at the time of the succession.

3. In the case of moneys on deposit with any corporation, bank, or other institution, person or persons, such tax shall be deemed to have originated in the municipal corporation or township in which such corporation, bank or other institution had its principal place of business, or in which such person or persons resided at the time of such succession.

§ 3. Said original sections 2624, 2685, 2689, and 5331 to 5348, inclusive, are hereby repealed.

§ 4. This act shall not affect pending proceedings for the assessment and collection of collateral inheritance taxes under the original sections hereby amended, nor the duty to pay, nor the right to collect any such tax which has accrued prior to the approval of this act, nor the rights or duties of any officer with respect to the assessment and collection of such collateral inheritance taxes; nor shall this act affect successions taking place prior to its approval, whether the death of the decedent occurred prior to such approval or not; but all successions occurring subsequently to the approval of this act shall be affected by and taxable under it, whether the death of the decedent occurred prior to its approval or not, unless a tax has already accrued thereon under the provisions of the original sections hereby amended.

## OKLAHOMA.

Taxes only the tangible property of nonresidents within the State including stocks and bonds of corporations.

TABLE OF RATES AND EXEMPTIONS UNDER ACT OF 1915

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates			
		Above exemption to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	In excess of \$100,000
Father, mother, husband, wife, child, brother, sister, son-in-law, daughter-in-law, adopted or mutually acknowledged child, lawful lineal descendants.	Widow, \$15,000; each child, \$10,000; all others, \$5,000.	1%	2%	3%	4%
All others except for religious, charitable or educational purposes which are exempted.	\$2,500	5%	6%	8%	10%

TABLE OF RATES AND EXEMPTIONS SUBSEQUENT TO MARCH 14, 1919

Class or Relationship	Exemption	Above exemption to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	In excess of \$100,000
Father, mother, husband, wife, child, adopted or mutually acknowledged child.	Widow, \$15,000; each child, \$10,000; others, \$5,000.	1%	2%	3%	4%
Brother, sister, son-in-law, daughter-in-law.	\$1,000	1%	3%	4%	5%
All others, except for religious, charitable or educational purposes.	\$500	6%	7%	8%	10%

## LAWS OF 1915, CHAPTER 162, BECAME A LAW MARCH 15, 1915.

Section 1. Imposes a tax on all transfers by will or the intestate laws and by deed, grant, bargain, sale or gift made in contemplation of death or intended to take effect in possession or enjoyment at or after such death, when the transferee becomes beneficially entitled in possession or expectancy either before or after the passage of the act.

§ 2. When property is not specifically devised it is deemed transferred proportionately among all the general legatees.

§ 3. Whenever any person or corporation shall exercise power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been transferred to such donee by will.

§ 4. That this act shall not apply to transfers, such as above mentioned, made in good faith for religious, charitable or educational purposes and uses. The words "tangible property" shall mean corporeal property such as real estate, and goods, wares, and merchandise and shares of stock, bonds, indebtedness of, or pecuniary interest in the property of any domestic or foreign corporations, associations, joint stock companies or trusts whose ownership is held or represented by shares engaged solely in interstate commerce or business done within this State, and that proportion of the value of the property represented by the stock, bonds, indebtedness of, or pecuniary interests in the property of any domestic or foreign corporations, associations, joint stock companies, or trusts whose ownership is held or represented by shares engaged in interstate or intrastate commerce, plus that portion of such business done or property employed in this State in interstate commerce, bears to the total business done, or property employed; and in the case of transportation and transmission companies doing interstate as well as intrastate commerce in this State, that portion of the value of the stock, bonds, indebtedness of or pecuniary interest in the property in any such corporation shall be deemed tangible, as the sum of the lines in this State bears to the entire extent of the lines operated by the corporation, association, joint stock companies, or trusts whose ownership is held or represented by shares, the same being deemed to have a situs in this State for the purposes of this act.

§ 5. The words "intangible property" as used herein shall be taken to mean incorporeal property, other than that named as tangible, and to include bonds, notes, credit and evidence of debts and such shares of stock of such corporations, associations, joint stock companies or trusts whose ownership is held or represented by shares as is not to be deemed tangible and such portions of such shares of stock, bonds, indebtedness of, or pecuniary interest in the property of any corporations, associations, joint stock companies, or trusts

whose ownership is held or represented by shares as are not to be deemed tangible.

§§ 6 and 7. Fix the rates and exemptions of the foregoing table.

§ 8. Every such tax shall be paid and remain a lien upon the property transferred until paid, and the person to whom the property is so transferred, and the administrator, executor, and trustees of every estate so transferred, shall be personally liable for such tax until its payment; and as to transfers of stock, bonds, indebtedness of, or pecuniary interest in the property of any herein, declared taxable there shall be a lien upon the property located and business transacted within this State of such corporation, prior to all other liens, and unless paid by such transferee, shall be enforced against the corporation. When paid by the corporation it shall, within the State, have a lien therefor upon the shares of stock, bonds, indebtedness of or pecuniary interest in the property of any so transferred which shall be superior to all other liens thereon. And all corporations, associations, joint stock companies or trusts, whose ownership is held or represented by shares which do business within this State and have property here or have property used in this State, shall keep a record at some convenient place in this State showing all transfers of stocks, shares, indebtedness, bonds or other pecuniary interest in their property as come to their notice at any time and shall have the right before paying off any sum attributable to such share of stock, bond, indebtedness or pecuniary interest to charge the same and recoup itself for the sums payable in that behalf by such company hereunder. The tax shall be paid to the State Treasurer, who shall give, and every executor, administrator or trustee shall take duplicate receipts from him for such payments, one of which he shall immediately send to the State Auditor, whose duty it shall be to charge the treasurer so receiving the tax, with the amount thereof, and to seal said receipt with the seal of his office, and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but no executor, administrator or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce a receipt so sealed and countersigned by the State Auditor or a copy thereof certified by him (unless a bond shall have been filed as hereinafter prescribed). And all taxes imposed by this act shall be due and payable at the time of the transfer, except as hereinafter provided. Taxes upon the transfer of any estate, property or interest therein, limited, conditioned, dependent or determinable upon the happenings of any contingency or future event, by reason of which the fair market value thereof cannot be ascertained at the time of the transfer, as herein provided, shall accrue and become due and payable when the beneficiaries shall come into actual possession or enjoyment thereof.

§ 9. Imposes interest at 10% from time the tax is due and payable.

§ 10. Requires the executor or administrator to deduct the tax or collect it from the beneficiary, to whom he must not deliver the property until the tax has been collected. Requires the heir to deduct the tax when the legacy is charged on real estate, and the tax may be enforced against it in the same manner as the legacy. If property is given for a limited period the executor must apply to the court for an apportionment of the tax among the beneficiaries.

§ 11. Makes provision for a proportionate refund where debts are proved against the estate after distribution.

§ 12. Taxes bequests to executors in lieu of commissions when in excess of reasonable compensation.

§ 13. If a foreign executor, administrator or trustee shall assign or transfer any property taxable under this act, the tax shall be paid to the State Treasurer on the transfer thereof. No safe deposit company, bank, or other institution in this State, or person or persons holding securities or assets of a decedent shall deliver or transfer the same to the executor, administrator, or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the State Audi-



tor at least ten days prior to the said transfer; nor shall such safe deposit company, bank or other institution, person or persons deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of this act, unless the State Auditor consents thereto in writing; and it shall be lawful for the State Treasurer or State Auditor personally or by representative, to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion of the amount to pay such tax as herein provided, shall render such safe deposit company, trust company, bank of other institution, person or persons, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this act.

§ 14. Gives the county court having jurisdiction of the estate jurisdiction in the tax proceedings.

§§ 15 to 28. Provide for the appointment of appraisers, the valuation of the estate, appeal and collection of delinquent taxes, closely following the New York practice. Life estates and remainders are computed by the Commissioner of Insurance on mortality tables on the basis of 5%.

#### AMENDMENT OF 1919, EFFECTIVE MARCH 14, 1919.

Section 1. Section 4 of chapter 162 of the Session Laws of Oklahoma, 1915, is hereby amended to read as follows:

§ 4. That this act shall not apply to transfers, such as above mentioned, made in good faith for religious, charitable or educational purposes and uses. The words "tangible property" shall mean corporeal property, such as real estate, and goods, wares and merchandise, the words real estate, and goods, wares and merchandise shall be construed to mean all property, real, personal or mixed, situated within the State of Oklahoma, or within its jurisdiction, and shares of stock, bonds, indebtedness of, or pecuniary interest in the property of any domestic or foreign corporations, association, joint stock companies or trusts whose ownership is held or represented by shares engaged solely in interstate commerce or business done within this State, and that proportion of the value of the property represented by the stock, bonds, indebtedness of or pecuniary interest in the property of any domestic or foreign corporations, associations, joint stock companies or trusts whose ownership is held or represented by shares engaged in interstate or intrastate commerce plus that portion of such business done or property employed in this State in interstate commerce, bears to the total business done, or property employed; and in the case of transportation and transmission companies doing interstate as well as intrastate commerce in this State, that portion of the value of the stocks, bonds, indebtedness of or pecuniary interest in the property of any such corporation shall be deemed tangible, as the sum of the lines in this State bears to the entire extent of the lines operated by the corporation, association, joint stock companies, or trusts whose ownership is held or represented by shares, the same being deemed to have a situs in this State for the purpose of this act.

§ 2. Section 5 of chapter 162 of the Session Laws of Oklahoma, 1915, be amended to read as follows:

§ 5. The word "intangible property" as used herein shall be taken to mean incorporeal property other than that named as tangible.

§ 3. Section 6 of chapter 162 of the Session Laws of Oklahoma, 1915, be amended to read as follows:

§ 6. Upon the transfer taxable under this act, of property or any beneficial interest therein, of an amount, as hereinafter stated, to any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this State, of the descendant, grantor, vendor or donor, or to any child to whom any such decedent, grantor, vendor or donor for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation

of a parent: Provided, however, that such relationship began at or before the child's fifteenth birthday, and was continuous for said ten (10) years thereafter, or to any lineal descendant of such decedent, grantor, vendor, or donor, born in lawful wedlock, the tax on such transfer shall be at the rate of:

One per cent (1%) on any amount up to and including the sum of twenty-five thousand dollars (\$25,000.00). There shall be exempt from any tax hereunder: to the wife fifteen thousand dollars (\$15,000.00); to each child of the decedent ten thousand dollars (\$10,000.00), and to each other relative mentioned above five thousand dollars (\$5,000.00), except to any brother, sister, wife or widow of son, or the husband of a daughter, there shall be exempt one thousand dollars (\$1,000.00).

Two per cent (2%) on any amount in excess of twenty-five thousand dollars (\$25,000.00) up to and including the sum of fifty thousand dollars (\$50,000.00), except to any brother, sister, wife or widow of a son, or the husband of a daughter the rate shall be three (3%) per cent.

Three (3%) per cent on any amount in excess of fifty thousand dollars (\$50,000.00) up to and including the sum of one hundred thousand dollars (\$100,000.00), except to any brother, sister, wife or widow of a son, or the husband of a daughter, the rate shall be four (4%) per cent.

Four (4%) per cent on any amount in excess of one hundred thousand dollars (\$100,000.00), except to any brother, sister, wife or widow of a son, or the husband of a daughter, the rate shall be five (5%) per cent.

§ 4. Section 7 of chapter 162, Session Laws of Oklahoma of 1915, is hereby amended to read as follows:

§ 7. Upon a transfer taxable this act of property of any beneficial interest therein of an amount in excess of five hundred dollars (\$500.00) to any person or corporation other than those enumerated in section 6, the tax shall be at the rate of:

Six (6%) per cent on any amount in excess of five hundred dollars (\$500.00) up to and including the sum of twenty-five thousand dollars (\$25,000.00).

Seven (7%) per cent on any amount in excess of twenty-five thousand dollars (\$25,000.00) up to and including the sum of fifty thousand dollars (\$50,000.00).

Eight (8%) per cent on any amount in excess of fifty thousand dollars (\$50,000.00) up to and including the sum of one hundred thousand dollars (\$100,000.00).

Ten (10%) per cent on any amount in excess of one hundred thousand dollars (\$100,000.00).

Provided, that the exemptions mentioned in this chapter when one or more shares of an estate shall consist of property within and property without the State, only such percentage of the exemptions named in this act, shall be allowed as is the percentage within the State of the total value of the shares.

§ 5. Section 8 of chapter 162, Session Laws, 1915, is hereby amended to read as follows:

§ 8. Every such tax shall be and remain a lien upon the property transferred until paid, and the person to whom the property is so transferred and the administrator, executor and trustees of every estate so transferred, shall be personally liable for such tax until its payment; and as to transfers of stock, bonds, indebtedness of, or pecuniary interest in the property of any herein, declared taxable, there shall be a lien upon the property located and business transacted within this State of such corporation, prior to all other liens, and unless paid by such transferee, shall be enforced against the corporation. When paid by a corporation it shall, within this State, have a lien therefor upon the shares of stocks, bonds, indebtedness of or pecuniary interest in the property of any so transferred which shall be superior to all other liens thereon. And all corporations, associations, joint stock companies, or trusts whose ownership is filed is held or represented by shares which do business within this State and have property here or have property used in this State, shall keep a record at some convenient place in this State showing all transfers of stock, shares, indebtedness, bonds or other pecuniary interest in their property as come to their notice at any time, and shall have the right before paying

off any sum attributable to such share of stock, bonds, indebtedness or pecuniary interest to charge to the same and recoup itself for the sums payable in that behalf by such company hereunder. The tax shall be paid to the State Auditor, who shall seal said receipt with the seal of his office, and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlements of his accounts; but no executor, administrator or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce a receipt so sealed and countersigned by the State Auditor or a copy thereof certified by him (or unless a bond shall have been filed as hereinafter prescribed). All taxes imposed by this act shall be due and payable at the time of the transfer, except as hereinafter provided. Taxes upon the transfer of any estate, property or interest therein, limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the fair market value thereof cannot be ascertained at the time of the transfer, as herein provided, shall accrue and become due and payable when the beneficiaries shall come into actual possession or enjoyment thereof.

§ 6. Section 9, chapter 162, Session Laws of Oklahoma, 1915, is hereby amended to read as follows:

§ 9. The taxes herein provided shall bear ten per cent (10%) interest from date when due and payable. The taxes herein provided shall be due and payable within twelve (12) months from the appointment of the executor, administrator or trustee, except as provided in section 8.

Section 7. Section 10, chapter 162, Session Laws of Oklahoma, 1915, is hereby amended to read as follows:

§ 10. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will entitled him to pay such taxes in the same manner as he might be entitled by law to do for the payment of the debts of the decedent. Any such administrator, executor or trustee having in charge or in trust any legacy or property for the distribution, subject to such tax, shall deduct the tax therefrom, and shall pay over the same to the State Auditor. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to the tax under this act, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisees shall deduct such tax therefrom and pay it to the administrator, executor or trustees, and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced or in the manner hereinafter provided. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into his hands by such legatee, and for such further order relative thereto as the case may require.

§ 8. Section 14 of chapter 162, Session Laws of Oklahoma, 1915, is hereby amended to read as follows:

§ 14. The County Court of every county in the State having jurisdiction to grant letters testamentary or of administration upon the estate of decedent whose property is taxable with any tax upon the inheritance tax laws, or to appoint a trustee of such estate, or any part thereof or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this act, and to do any act in relation thereto authorized by law to be done by the County Court in other matters or proceedings coming within its jurisdiction, and if two or more County Courts shall be entitled to exercise any such jurisdiction, the County Court first acquiring jurisdiction thereunder shall retain the same to the exclusion of every other

County Court. Every petition for ancillary letters, testamentary or of administration, shall include a true and correct statement of all the decedent property both within and without the State, and the value hereof, and, upon presentation thereof the County Court shall issue a notice of hearing directed to the State Auditor, and at the time therein stated the County Court shall proceed to determine the amount of the tax which may be or become due under the provisions of this act, and the decree awarding the letters may contain provisions for the payment of such tax or the giving of security therefor, which might be made by such County Court if the State Auditor were a creditor of deceased.

§ 9. Section 16 of chapter 162, Session Laws of Oklahoma, 1915, is hereby amended to read as follows:

§ 16. The appraiser appointed under the provisions of the foregoing section, shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the State Auditor, and such persons as the County Court may by order direct, of the time and place when he will appraise such property. He shall at said time and place appraise the same at its fair market value as herein prescribed, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make report thereof, and of such value in writing, to the County Court, and such other facts in relation thereto and to the said matters as the said County Court may order or require.

The appraiser shall be paid a reasonable compensation for his service, and the witnesses before him shall be paid fees in the same amount as in other civil cases. The claims for all fees or expenses incurred under this section shall be a charge against the estate, and when approved by the county judge, allowed as other claims against the estate.

§ 10. Section 21 of chapter 162, Session Laws of Oklahoma, 1915, is hereby amended to read as follows:

§ 21. If the State Auditor shall have reason to believe that any tax is due and unpaid under this act for any reason, he shall notify the Attorney-General of such fact, who may, if the facts warrant, apply to the County Court for a citation directed to the person liable to pay such tax, citing him to appear and show cause, at the time named herein, why the tax should not be paid. The judge of the County Court shall upon proper application issue a citation, the service whereof, and the time, manner and proof thereon, shall conform as near as may be to the provisions of the laws governing probate practice of this State. The Attorney-General may direct the proceedings for and on behalf of the State, when he deems it necessary, and it shall be the duty of the county attorney to appear in such proceedings for the State when required so to do by the Attorney-General. The State Examiner and Inspector and the State Auditor shall as often as may be practicable, inspect the files and records of the County Courts of this State in all cases where an inheritance tax is or may be due.

§ 11. Section 28 of chapter 162, Session Laws of Oklahoma, 1915, is hereby amended to read as follows:

§ 28. The State Auditor shall promulgate reasonable rules and regulations for the conveying of this act into effect and for the circulation of the proportions taxable hereunder upon the transfer of any interests in any company doing business as a unit within this State and outside thereof so that any property held outside of the State and not owned, held, used or operated for or in connection with the property owned, held or used in this State, shall be omitted from the tax hereunder laid.

All reports as to heirs, relationship, amount inherited, amount taxed, and amount of tax and any other information which the State Auditor shall require shall be made under oath by the executor, administrator or trustee.

§ 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed by the House of Representatives on the 14th day of March, A. D. 1919.

Session Statutes: L. 1907-8, ch. 81.

**Taxes all property of nonresident decedents within the State, including stock in domestic corporations.**

CLASS OR RELATIONSHIP	Amount of exemption	Rates			
Grandparents, parents, husband, wife, child, brother, sister, son-in-law, daughter-in-law, adopted or mutually acknowledged child, lawful lineal descendants.	\$5,000 to each; no tax where entire estate is less than \$10,000.	1% on all above \$5,000.			
Aunt, uncle, niece, nephew and their lineal descendants.	\$2,000 to each; no tax on estates less than \$5,000.	2% on all above \$2,000.			
Benevolent, charitable or benevolent institutions incorporated within the state or carrying out those purposes within the State.	All exempt. ....	No tax.			
		On all up to \$10,000	\$10,000 to \$20,000	\$20,000 to \$50,000	In excess of \$50,000
All others .....	If less than \$500 to each, no tax.	3%	4%	5%	6%

CLASS OR RELATIONSHIP	Amount exempt	Rates							
		\$5,000 to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$200,000	\$200,000 to \$400,000	\$400,000 to \$600,000	In excess of \$600,000	
Grandfather, grandmother, father, mother, husband, wife, child, brother, sister, wife, or widow of a son, or the husband of a daughter.	\$5,000	1%	1½%	2%	2½%	3%	3½%	4%	
		\$1,000 to \$5,000	\$5,000 to \$10,000	\$10,000 to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$200,000	In excess of \$200,000	
Aunt, uncle, niece, nephew or lineal descendant of the same.	\$1,000	2%	3%	4%	5%	6%	7%	8%	
		\$500 to \$2,500	\$2,500 to \$5,000	\$5,000 to \$10,000	\$10,000 to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$200,000	In excess of \$200,000
All other cases except exempt charitable corporations, mentioned in table of rates, prior to May 21, 1917.	\$500	3%	4%	5%	6%	7%	8%	9%	10%

TABLE OF RATES AND EXEMPTIONS EFFECTIVE MAY 29, 1919

Class or Relationship	Exemption	Above exemp- tion to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$300,000	\$300,000 to \$500,000	\$500,000 to \$1,000,000	In excess of \$1,000,000
Grandparents, father, mother, husband, wife, child or lineal descendant.	\$10,000	1%	1½%	2%	3%	5%	7%	10%
		\$1,000 to \$5,000	\$5,000 to \$10,000	\$10,000 to \$30,000	\$30,000 to \$50,000	In excess of \$50,000		
Brother, sister, uncle, aunt, niece, nephew or lineal descendant of of same.	\$1,000	1%	2%	4%	7%	10%	15%	
		Up to \$500	\$500 to \$1,000	\$1,000 to \$2,000	\$2,000 to \$4,000	\$4,000 to \$10,000	\$10,000 to \$25,000	\$25,000 to \$50,000
All others, except bene- volent, charitable and educational institu- tions within the State.	None	2%	4%	6%	8%	10%	15%	20% In excess of \$50,000

**LAWS OF 1903, PAGE 49, AS AMENDED BY LAWS OF 1905, CHAPTER 178; LAWS OF 1909, CHAPTERS 15 AND 211; LAWS OF 1915, CHAPTER 42 AND CHAPTER 372; LAWS OF 1917 AND ACT OF 1919.**

**§ 1191, L. O. L.**

All property within the jurisdiction of the State, and any interest therein whether belonging to the inhabitants of this State or not, and whether tangible or intangible, which shall pass or vest by dower, curtesy, will, or by statutes or inheritance of this or any other State, or by deed, grant, bargain, sale or gift, or as an advancement or division of his or her estate made in contemplation of the death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after the death of the grantor, bargainor or donor to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate, shall become beneficially entitled, in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified in section 1192, to be paid to the Treasurer of the State for the use of the State; and all heirs, legatees, and devisees, administrators, executors and trustees, and such grantee under a conveyance, and any such donee under a gift made during the grantor or donor's life, shall be respectively liable for any and all such taxes, with interest thereon, until the same shall have been paid, as hereinafter provided; provided, however, that devisees, bequests, legacies and gifts to benevolent, charitable, or educational institutions incorporated within this State and actually engaged in this State in carrying out the objects and purposes for which so incorporated or to any person or persons to be held in trust for any such institution in lieu thereof, shall be exempt from any taxation under the provisions of this act.

The rest of the section and all of section 2 fix the rates and exemptions of the foregoing tables.

§ 3. All taxes imposed by this act shall take effect at and accrue upon the death of the decedent, or donor, and shall be due and payable, at the expiration of eight months from such death, except as otherwise provided in this act; *provided, however*, that taxes upon any devise, bequest, legacy, or gift, limited, conditioned, dependent, or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof can not be ascertained at or before the time when the taxes become due and payable as aforesaid, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

§ 4. Any administrator, executor, or trustee having in charge, or in trust, any property for distribution, embraced in or belonging to any inheritance, devise, bequest, legacy, or gift, subject to the tax thereon as imposed by this act, shall deduct the tax therefrom, and within thirty days thereafter he shall pay over the same to the State Treasurer, as herein provided. If such property be not in money, he shall collect the tax on such inheritance, devise, bequest, legacy, or gift, upon the appraised value thereof from the person entitled thereto. He shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, bequest, legacy, or gift, subject to tax under this act, to any person until he shall have collected the tax thereon.

§ 5. Provides for receipts which must be produced on final settlement.

§ 6. Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift, until paid, and the person to whom such property is transferred, and the administrators, executors and trustees of every estate embracing such property shall be personally liable for such tax until its payment, to the extent of the value of such property; *provided, however*, that in all estates, excepting those of nonresident deceased, all inheritance taxes shall be sued for within five years after they have become due and legally demandable, otherwise they shall be conclusively presumed to be paid and cease to be a lien as against the estate, or any part thereof, of the decedent; *provided, further*, that in estates of nonresident deceased, such limitation period shall not apply until at least one year shall have elapsed after official notice of the death of said nonresident deceased, with description and probable value of the estate, shall have been filed with the State Treasurer. [As amended by chap. 42, L. 1915.]

§ 7. Allows a discount of 5% if tax is paid within eight months. After eight months 8% interest charged from time when due, except in case of unavoidable delay, when it may be reduced to 6% until cause of delay is removed; then 8%.

§ 8. Gives power of sale to pay tax in the same way as to pay debts.

§ 9. Requires the heir to deduct the tax when legacy is charged on real estate, makes tax a lien and enforceable in same manner as a legacy. Where property is given for a limited period must apportion tax among beneficiaries.

§ 10. Provides for a refund of taxes erroneously paid when application is made within three years of payment.

§ 11. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this State standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the State Treasurer on or before the transfer thereof, and no such assignment or transfer shall be valid unless such tax is paid.

§ 12. No safe deposit company, trust company, bank, corporation, or other institution, person or persons, holding securities or assets of a decedent, or corporation in which said decedent, at the time of his death, owned any stock, shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent, or upon their order or request, unless notice of the said time and place of such intended transfer be served upon the State Treasurer in writing at least five days prior to the said transfer; and it shall be lawful for the said State Treasurer, personally or by representative, to remove said securities prior to the time of such delivery or transfer. If upon

such examination the State Treasurer, or his said representative, shall, for any cause, deem it advisable that such securities or assets should not be immediately delivered or transferred, he may forthwith notify, in writing, such company, bank, institution, or person to defer delivery or transfer thereof for a period not to exceed ten days from the date of such notice, and thereupon it shall be the duty of the party notified to defer such delivery until the time stated in such notice, or until the revocation thereof within such ten days; failure to serve the notice first above-mentioned or allow such examination, or to defer the delivery of such securities or assets for the time stated in the second of said notices, shall render said safe deposit company, trust company, corporation, bank, or other institution, person or persons, liable to the payment of the tax due on said securities or assets, pursuant to the provisions of this act.

§ 13. Provides that remaindermen may defer payment of tax until they receive the property by filing a bond with sworn inventory within six months in three times the amount of the tax and renewing it every five years.

§ 14. Gives the County Court granting letters jurisdiction in tax proceedings.

§§ 16 to 37. Make the usual provisions for inventory, appraisal, appeal, reports and collection of delinquent taxes, the compromise of uncertain tax claims, and the valuation of life estates and remainders, using combined experience tables on the 4% basis.

§ 38. Except as to real property located outside of the State passing in fee from the decedent owner, the tax imposed under section 2 shall hereafter be assessed against and be collected from property of every kind, which, at the death of the decedent owner, is subject to, or thereafter, for the purpose of distribution, is brought into this State and becomes subject to the jurisdiction of the courts of this State for distributive purposes, or which was owned by any decedent domiciled within the State at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the State.

§ 39. In case of any property belonging to a foreign estate, which estate in whole or in part is liable to pay an inheritance tax in this State, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this State. In the event that the executor, administrator, or trustee of such foreign estates filed with the clerk of the court having ancillary jurisdiction, and with the State Treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this State bears to the value of the entire estate.

§§ 40, 41, 42 and 43. Provide for the compensation of officers, impose a penalty for accepting a fee or reward, and repeal all inconsistent statutes.

**Prior Statutes:** None prior to 1903.

## PENNSYLVANIA.

Taxes transfers of stock in domestic corporations owned by nonresident decedents dying after June 20, 1919.

From 1887 until July 11, 1917, this State imposed a flat tax of 5% on the estate of all decedents dying seized of more than \$250, except on transfers to the father, mother, children, lawful lineal descendants and wife or widow of a son, who were exempt.

The act of July 11, 1917, added a flat tax of 2% on all transfers to father, mother, husband, wife, children, lawful lineal descendants, step children and wife or widow of a son; all others being taxed at 5% as under the former



statute. This act included the property of nonresidents within the State, but under the construction of the courts it was confined to tangibles.

The act of 1919, in effect June 20, 1919, does not change these rates, and allows no exemptions. But there is slight alteration in the list of persons in the 2% class. This list under the 1919 act includes: father, mother, husband, wife, children, lineal descendants born in lawful wedlock, legally adopted children, children of a former husband or wife, wife or widow of a son, also on transfers from the mother to an illegitimate child or from such child to its mother.

The act of 1919 taxes the transfer of stock held by nonresidents in domestic corporations and provides that the taxes imposed by other States and the Federal Government shall not be a deduction, thus reversing by legislation the decision of the Pennsylvania courts on this subject.

All three of the Pennsylvania statutes are given below:

#### ACT OF 1887.

##### In Effect Until July 11, 1917. Chapter 37, Laws of 1887.

Section 1. Be it enacted, etc., that all estates, real, personal and mixed, of every kind whatsoever, situated within this State, whether the person or persons dying seized thereof be domiciled within or out of this State, and all such estates situated in another State, territory or country, when the person, or persons, dying seized thereof, shall have their domicile within this Commonwealth, passing from any person, who may die seized or possessed of such estates, either by will, or under the intestate laws of this State, or any part of such estate, or estates, or interest therein, transferred by deed, grant, bargain, or sale, made or intended to take effect, in possession or enjoyment after the death of the grantor, or bargainor to any person or persons, or to bodies corporate or politic, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children and lineal descendants born in lawful wedlock, or the wife, or widow of the son of the person dying seized or possessed thereof, shall be and they are hereby made subject to a tax of five dollars on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the Commonwealth; and all owners of such estates, and all executors and administrators and their sureties, shall only be discharged from liability for the amount of such taxes or duties, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed; provided, that no estate which may be valued at less than two hundred and fifty dollars shall be subject to the duty or tax.

§ 2. Taxes bequests to executors in lieu of commissions in excess of reasonable compensation.

§ 3. In all cases where there has been or shall be a devise, descent or bequest to collateral relatives or strangers, liable to the collateral inheritance tax, to take effect in possession, or to come into actual enjoyment after the expiration of one or more life estates, or a period of years, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate, by the termination of the estates for life or years, and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid; provided, that the owner shall have the right to pay the tax at any time prior to his coming into possession, and in such cases, the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years; and provided further, that the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid. And the owner of any personal estate shall make a full return of the same to the register of wills of the proper county within one year from the death of the decedent, and within that time enter into security for the payment of the tax to the satisfaction of such register; and in case of failure so to do the tax shall be immediately payable and collectible.

§ 4. If the collateral inheritance tax shall be paid within three months after the death of the decedent, a discount of 5 per centum shall be made and allowed, and if the said tax is not paid at the end of one year from the death of the decedent, interest shall then be charged at the rate of 12 per centum per annum on such tax; but where from claims made upon the estate, litigation, or other unavoidable cause of delay, the estate of any decedent or a part thereof cannot be settled up at the end of the year from his or her decease, 6 per centum per annum shall be charged upon the collateral inheritance tax, arising from the unsettled part thereof, from the end of such year until there be default; provided, further, that where real or personal estate withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto, subject to said tax, has not been, or shall not be productive to the extent of 6 per centum per annum, they shall not be compelled to pay a greater amount as interest to the Commonwealth than they may have realized, or shall realize from such estate during the time the same has been or shall be withheld as aforesaid.

§ 5. Requires the executor or administrator to deduct the tax if in money; if in property to collect from beneficiary, and gives power of sale in case of neglect or refusal; must not deliver property until the tax has been paid.

§ 6. If the legacy subject to collateral inheritance tax be given to any person for life, or for a term of years, or for any other limited period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but if not money, application shall be made to the orphan's court having jurisdiction of the accounts of the executors or administrators to make apportionment, if the case requires it, of the sum to be paid by such legatees, and for such further order relative thereto as equity shall require.

§ 7. Requires the heir to deduct the tax where legacy is charged on real estate, makes it a lien, and payment may be enforced in same manner as payment of a legacy.

§ 8. Whenever any real estate of which any decedent may die seized shall be subject to the collateral inheritance tax, it shall be the duty of executors and administrators to give information thereof to the register of the county, where administration has been granted, within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period, within one month after the same shall have come to their knowledge, and it shall be the duty of the owners of such estate, immediately upon the vesting of the estate, to give information thereof to the register having jurisdiction of the granting of administration.

§ 9. It shall be the duty of any executor or administrator, on the payment of collateral inheritance tax, to take duplicate receipts from the register, one of which shall be forwarded forthwith to the Auditor-General, whose duty it shall be to charge the register receiving the money with the amount, and seal with the seal of his office, and countersign the receipt and transmit it to the executor or administrator, whereupon it shall be a proper voucher in the settlement of the estate; but in no event shall an executor or administrator be entitled to a credit in his account by the register, unless the receipt is so sealed and countersigned by the Auditor-General.

§ 10. Whenever any foreign executor, or administrator, or trustee, shall assign or transfer any stocks or loans in this Commonwealth, standing in the name of the decedent, or in trust for a decedent, which shall be liable for the collateral inheritance tax, such tax shall be paid, on the transfer thereof, to the register of the county where such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax.

§ 11. Whenever debts shall be proven against the estate of a decedent, after distribution of legacies from which the collateral inheritance tax has been deducted, in compliance with this act, and the legatee is required to refund any portion of a legacy, a portion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the State or county treasury, or by the county treasurer, if it has been so paid.

§ 12. It shall be the duty of the register of wills of the county, in which

letters testamentary, or of administration are granted, to appoint an appraiser as often as and whenever occasion may require to fix the valuation of estates which are, or shall be, subject to collateral inheritance tax, and it shall be the duty of such appraiser to make a fair and conscionable appraisement of such estates, and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estates growing out of said estates, upon which annuities and life estates the collateral inheritance tax shall be immediately payable out of the estate at the rate of such valuation: provided, that any person or persons not satisfied with said appraisement shall have the right to appeal, within thirty days, to the orphans' court of the proper county or city, on paying, or giving security to pay, all costs, together with whatever tax shall be fixed by said court, and upon such appeal said courts shall have jurisdiction to determine all questions of valuation, and of the liability of the appraised estate for such tax, subject to the right of appeal to the Supreme Court as in other cases.

§ 13. It shall be a misdemeanor in any appraiser, appointed by the register to make any appraisement in behalf of the Commonwealth, to take any fee or reward from any executor or administrator, legatee, next of kin, or heir of any decedent, and for any such offense the register shall dismiss him from such service, and upon conviction in the quarter sessions, he shall be fined not exceeding five hundred dollars, and imprisoned not exceeding one year, or both, or either, at the discretion of the court.

§ 14. It shall be the duty of the register of wills to enter in a book, to be provided at the expense of the Commonwealth, to be kept for that purpose, and which shall be a public record, the returns made by all appraisers under this act, opening an account in favor of the Commonwealth against the decedent's estate, and the register may give a certificate of payment of such tax from said record; and it shall be the duty of the register to transmit to the Auditor-General, on the first day of each month, a statement of all returns made by appraisers during the preceding month, upon which the taxes remain unpaid which statement shall be entered by the Auditor-General in a book to be kept by him for that purpose. And whenever any such tax shall have remained due and unpaid for one year, it shall be lawful for the register to apply to the orphans' court, by bill or petition, to enforce the payment of the same; whereupon said court, having caused due notice to be given to the owner of the real estate charged with the tax, and to such other persons as may be interested, shall proceed, according to equity, to make such decrees, or orders, for the payment of the said tax, out of such real estate, as shall be just and proper.

§ 15. If the register shall discover that any collateral inheritance tax has not been paid over, according to law, the orphans' court shall be authorized to cite the executors or administrators of the decedent, whose estate is subject to the tax, to file an account or to issue a citation to the executors, administrators, or heirs, citing them to appear on a certain day and show cause why the said tax should not be paid; and when personal service cannot be had, notice shall be given for four weeks, once a week, in at least one newspaper published in said county; and if the said tax shall be found to be due and unpaid, the said delinquent shall pay said tax and costs. And it shall be the duty of the register, or the Auditor-General, to employ an attorney, of the proper county, to sue for the recovery and amount of such tax, and the Auditor-General is authorized and empowered, in settlement of accounts of any register, to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of tax.

§ 16. The registers of wills, of the several counties of this Commonwealth, upon their filing with the Auditor-General the bond hereinafter required shall be the agents of the Commonwealth for the collection of the collateral inheritance tax; and for services rendered in collecting and paying over the same, the said agents shall be allowed to retain, for their own use, such percentage as may be allowed by the Auditor-General, not exceeding five per centum on all taxes paid and accounted for: Provided, That this section shall not apply to the fees of registers elected prior to the passage of this act.

§ 17. The said register shall give bond to the Commonwealth in such penal

sum as the orphans' court of the county may direct with two or more sufficient sureties for the faithful performance of the duties hereby imposed, and for the regular accounting and paying over of the amounts to be collected and received, and said bond, on its execution and approval, by the said orphans' court, to be forwarded to the Auditor-General.

§ 18. Until bond and security be given, as required by the preceding section, the said collateral inheritance tax shall be received and collected by the county treasurer as heretofore, and in such cases all the provisions of this act, relating to collection and payment by registers, shall apply to the county Treasurer.

§ 19. It shall be the duty of the register of wills, of each county, to make returns and payment to the State Treasurer of all the collateral inheritance taxes he shall have received, stating for what estate paid, on the first Mondays of April, July, October and January, in each year; and for all taxes collected by him and not paid over within one month, after his quarterly return of the same, he shall pay interest at the rate of twelve per centum per annum until paid.

§ 20. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: Provided, That the said lien shall be limited to the property chargeable therewith: and provided further, That all collateral inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to have been paid, and cease to be a lien as against any purchasers of real estate: and provided further, That all taxes due and legally demandable at the date of the passage of this act, the collection of which would be barred by the provisions hereof, shall not be barred if suit shall be brought therefor within one year from the date of the passage of this act.

§ 21. All laws, or parts of laws, heretofore approved, relating to the collection of the collateral inheritance tax, and inconsistent herewith, be and the same are hereby repealed.

#### ACT OF 1917.

In Effect from July 11, 1917, Until June 20, 1919.

An Act for the imposition and collection of certain inheritance taxes.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same That all estates real, personal and mixed of every kind whatsoever situated within this Commonwealth whether the person dying seized thereof be domiciled within or without this Commonwealth and all such estates situated in another State, territory or country when the person dying seized thereof shall have his domicile within this Commonwealth passing from any person who may die seized or possessed of such estates either by will or under the intestate laws of this Commonwealth or any part of such estates or interests therein transferred by deed, grant, bargain, or sale made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor to or for the use of father, mother, husband, wife, children, lineal descendants born in lawful wedlock, children of a former husband or wife, or the wife or widow of the son of a person dying seized or possessed thereof or to legally adopted children are hereby made subject to a tax of two (\$2) dollars on every hundred dollars of the clear value of such estates and at the same rate for any less amount to be paid for the use of the Commonwealth.

The tax hereinbefore provided is also imposed on any estate passing from the mother of an illegitimate child or from any person of whom the mother is a lineal descendant to such illegitimate child, his wife or widow. Such tax also applies to any estate passing from an illegitimate child to his mother.

§ 2. The register of wills of the county in which letters testamentary or of administration are granted shall appoint an appraiser whenever occasion may require to fix the value of the estates hereinbefore subjected to tax.

Such appraiser shall make a fair conscionable appraisement of such estates and assess and fix the cash value of all annuities and life estates growing out of said estates upon which annuities and life estates, the tax imposed by this act shall be immediately payable out of the estate at the rate of such valuation.

§ 3. The compensation of such appraisers shall be as follows, namely: For each day during which an appraiser shall actually be engaged in making appraisements of property subject to the tax he shall receive the sum of five dollars. If it shall be necessary for the appraiser to travel from his place of residence to appraise property subject to the tax he shall be allowed such actual necessary traveling expenses as he may incur, which expenses shall be itemized in a sworn statement to be returned to the register and subject to the final approval of the Auditor-General.

§ 4. Whenever because of the complicated nature of an estate subject to the payment of such tax the interest of the Commonwealth shall require the appointment as appraiser of such estate of a person possessed of expert or technical knowledge to ascertain the value thereof; reasonable additional compensation shall be allowed such appraiser for the exercise of such expert or technical knowledge. In case where after the appointment of an appraiser it shall appear that the proper appraisement of said estate will require the services of a person possessed of expert or technical knowledge, whereof the appraiser appointed is not possessed, the appraiser may employ the services of a person possessed of expert or technical knowledge to assist him in the appraisement, and for such services the person so employed shall receive reasonable compensation. In all such cases the register of wills appointing the appraiser shall certify to the Auditor-General that there is an actual necessity for the appointment of an appraiser possessed of expert or technical knowledge or that the appraiser already appointed to appraise the estate in question should be assisted by a person possessed of such knowledge. No person shall be appointed as such expert appraiser or as expert assistant to the appraiser until the approval of the Auditor-General of said appointment is first obtained, nor shall any payment be made to any appraiser or to any person employed by him under this section until an itemized statement of the services performed and the compensation recommended shall have been rendered under oath or affirmation to the Auditor-General for his approval and shall have received the same. No clerk or other person employed in the office of a register of wills shall be appointed as an expert appraiser of an estate subject to the payment of such tax nor as an expert to assist the appraiser of such estate.

§ 5. It shall be a misdemeanor for an appraiser to take any fee or reward from any executor or administrator, legatee, lineal descendant, or heir of any decedent, and for any such offense the register shall dismiss him from such service. Upon conviction of such misdemeanor such appraiser shall be fined not exceeding five hundred dollars or imprisoned not exceeding one year or both.

§ 6. Any person not satisfied with any appraisement may appeal within thirty days to the orphans' court on paying or giving security to pay all costs, together with whatever tax shall be fixed by the court. Upon such appeal the court may determine all questions of valuation and of the liability of the appraised estate for such tax subject to the right of appeal to the Supreme or Superior Court.

§ 7. The register of wills shall enter in a book to be provided at the expense of the Commonwealth, which shall be a public record, the returns made by all appraisers under the provisions of this act opening an account in favor of the Commonwealth against each decedent's estate. The register may give certificates of payment of such tax from such record. The register shall transmit to the Auditor-General on the first day of each month a statement of all returns made by appraisers during the preceding month upon which the taxes have been paid or remain unpaid, which statement shall be entered by the Auditor-General in a book to be kept for that purpose. Whenever any such tax shall have remained due and unpaid for one year the register may

apply to the orphans' court by bill or petition to enforce the payment of the same, whereupon the court having caused notice to be given to the owner of the real estate charged with the tax and to such other person as may be interested shall proceed according to equity to make such decree or orders for the payment of the tax out of such real estate as shall be just and proper.

§ 8. If the register shall discover that any tax imposed by this act has not been paid the orphans' court may cite the executors or administrators of the decedent whose estate is subject to the tax to file an account or to appear on a certain day and show cause why the tax should not be paid. When personal service cannot be had notice shall be given for four weeks, once a week in at least one newspaper published in the county and in the legal periodical designated by the rules of court of the county for the publication of legal notices. If the tax shall be found to be due the delinquent shall pay the tax and costs. The Auditor-General is authorized to employ an attorney of the county to sue for the recovery of the amount of such tax. The Auditor-General is authorized to employ a resident attorney in all counties having a population of one hundred thousand and less than five hundred thousand and in counties having a population of five hundred thousand and more, such additional resident attorneys as may be necessary to protect the Commonwealth's interests in all matters relating to enforcing the provisions of this act. Said resident attorney or attorneys shall be allowed such reasonable compensation as may be fixed by the Auditor-General, which shall be paid from the moneys realized from such taxes. The Auditor-General in the settlement of accounts of any register may allow him costs of advertising and other reasonable fees and expenses incurred in the collection of the tax.

§ 9. Where there is a devise, descent, or bequest liable to the tax hereinbefore imposed, which devise, descent, or bequest is to take effect in possession or to come into actual enjoyment after the expiration of one or more life estates or a period of years, the tax on such estate shall not be payable nor shall interest begin to run thereon until the person liable for the same shall come into actual possession of such estate by the termination of the estates for life or years. The tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner, but the owner may pay the tax at any time prior to his coming into possession. In such cases the tax shall be assessed on the value of the estate at the time of the payment of the tax after deducting the value of the life estate or estates for years. The tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid. The owner of any personal estate shall make a full return of the same to the register of wills within one year from the death of the decedent and within that time enter into security for the payment of the tax to the satisfaction of such register. In case of failure so to do the tax shall be immediately payable.

§ 10. If the tax is paid within three months after the death of the decedent a discount of five per centum shall be allowed. If the tax is not paid at the end of one year from the death of the decedent interest shall be charged at the rate of twelve per centum per annum on such tax. Where because of claims made upon the estate litigation or other unavoidable cause of delay the estate of any decedent or any part thereof cannot be settled up at the end of the year interest at the rate of six per centum per annum shall be charged upon the tax arising from the unsettled part thereof from the end of such year until there be default. Where real or personal estate withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto, subject to such tax, has not been productive to the extent of six per centum per annum, the proper parties shall not pay a greater amount as interest to the Commonwealth than they have realized or shall realize from such estate during the time the same has been or shall be withheld as aforesaid.

§ 11. The executor or administrator or other trustee paying any legacy or share in the distribution of any estate subject to the said tax shall deduct therefrom at the rate of two dollars in every hundred dollars upon the whole legacy or sum paid, or if not money he shall demand payment of a sum to be

computed at the same rate upon the appraised value thereof. No executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed subject to tax except on the payment into his hands of a sum computed on its value as aforesaid. In case of neglect or refusal on the part of such legatee to pay the same such specific legacy or article or so much thereof as shall be necessary shall be sold by such executor or administrator at public sale after notice to such legatee and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law. Every sum of money retained by any executor or administrator or paid into his hands on account of any legacy or distributive share for the use of the Commonwealth shall be paid by him without delay.

§ 12. When a legacy subject to tax under this act is given to any person for life or for a term of years, or for any other limited period upon the condition or contingency if the same be money the tax thereon shall be retained upon the whole amount, but if not money, application shall be made to the orphans' court to make apportionment, if the case require it, of the sum to be paid by such legatees and for such further order relative thereto as equity shall require.

Whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before paying the same shall deduct therefrom at the rate aforesaid and pay the amount so deducted to the executor and the same shall remain a charge upon such real estate until paid and the payment thereof shall be enforced by the decree of the orphans' court in the same manner as the payment of such legacy may be enforced.

§ 13. Whenever any real estate of which any decedent may die seized shall be subject to the tax, the executors and administrators shall give information thereof to the register of the county where administration has been granted within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period then within one month after the same shall have come to their knowledge. The owners of such estate immediately upon its vesting shall give information thereof to the register having jurisdiction of the granting of administration.

§ 14. Any executor or administrator on the payment of said tax shall take duplicate receipts from the register, both of which shall be forwarded forthwith to the Auditor-General, who shall charge the register receiving the money with the amount and seal with the seal of his office and countersign the original receipt and transmit it to the executor or administrator whereupon it shall be a proper voucher in the settlement of the estate. In no event shall an executor or administrator be entitled to a credit in his account by the register unless the receipt is so sealed and countersigned by the Auditor-General.

§ 15. Whenever any foreign executor or administrator, or trustee, shall assign or transfer any stocks or loans in this Commonwealth standing in the name of the decedent, or in trust for the decedent, which shall be liable for the tax imposed by this act, such tax shall be paid on the transfer thereof to the register of the county where such transfer is made, otherwise the corporation permitting such transfer shall become liable to pay such tax.

§ 16. Whenever debts shall be proved against the estate of a decedent after distribution of legacies from which the tax has been deducted, in compliance with this act, and the legatee is required to refund any portion of a legacy, a portion of the said tax shall be repaid to him by the executor or administrator if the tax has not been paid into the State or county treasury, or by the county treasurer if it has been so paid.

§ 17. The registers of wills upon their filing with the Auditor-General the bond hereinafter required shall be the agents of the Commonwealth for the collection of the said tax. For services rendered in collecting and paying over the same they shall be allowed to retain for their own use upon the gross amount collected during any year, five per centum upon the tax collected if such tax shall amount to a sum of fifty thousand (\$50,000) dollars or less, three per centum on the amounts collected in excess of fifty thousand (\$50,000) dollars and not exceeding one hundred thousand (\$100,000) dollars, two per centum on the amounts collected in excess of one hundred thousand (\$100,000)

dollars and not over two hundred thousand (\$200,000) dollars, and one per centum on the amounts collected in excess of two hundred thousand (\$200,000) dollars.

§ 18. Each register shall give bond to the Commonwealth in such penal sum as the orphans' court may direct with two or more sufficient sureties for the faithful performance of the duties hereby imposed and for the regular accounting and paying over of the amounts to be collected and received. This bond when executed and approved shall be forwarded to the Auditor-General.

Until such bond and security be given the said tax shall be collected by the county treasurer. In such cases all the provisions of this act relating to collection and payment by registers shall apply to the county treasurer.

§ 19. Each register of wills shall on the first Monday of each month make return to the Auditor-General and return and payment to the State Treasurer of all taxes imposed under this act received stating for what estate paid. All taxes collected by him and not paid over within one month after his quarterly return of the same he shall pay interest at the rate of twelve per centum per annum until paid.

§ 20. The lien of the said tax shall continue until the tax is settled and satisfied and shall be limited to the property chargeable therewith. All such taxes shall be sued for within five years after they are due, otherwise they shall be presumed to have been paid and cease to be a lien as against any purchasers of real estate.

§ 21. In all cases where any amount of such tax is paid erroneously to the register of wills the State Treasurer on satisfactory proof rendered to him by said register of wills of such erroneous payment may refund and pay over to the person paying such tax the amount erroneously paid. All such applications for the repayment of such tax erroneously paid in the treasury shall be made within two years from the date of payment except when the estate upon which such tax has been erroneously paid shall have consisted in whole or in part of a partnership or other interest of uncertain value or shall have been involved in litigation by reason whereof there shall have been an over-valuation of that portion of the estate on which the tax has been assessed and paid which over-valuation could not have been ascertained within said period of two years, in such case the application for repayment shall be made to the State Treasurer within one year from the termination of such litigation or ascertainment of such over-valuation.

§ 22. This act does not repeal or affect the tax imposed and collected under the act approved May sixth, one thousand eight hundred eighty-seven, entitled "An act to provide for the better collection of collateral inheritance taxes," its amendments and supplements.

§ 23. All acts or parts of acts inconsistent with this act are hereby repealed.

§ 24. *The provisions of this act are severable and in the event of any provision hereof being declared unconstitutional, it is hereby declared as the legislative intent that such unconstitutional provision shall not affect the validity of any other provision of this act.*

#### GOVERNOR'S MEMORANDUM.

The Governor long withheld his approval but finally affixed his signature and the act became a law July 11, 1917.

The Governor appended the following memorandum:

*Approved:* The 11th day of July, 1917.—This bill is approved with the greatest reluctance. I am constrained to do so solely because the necessities of the Commonwealth require the raising of additional revenue.

The Assembly of 1917, which concluded its lengthy session on June 28, appropriated a total of \$87,164,430.73. The responsible fiscal officers of the Commonwealth on December 28, 1916, advised me that the sum available for appropriation at this session was \$70,091,178.22, and on January 2, 1917, I so advised the General Assembly. I am now advised by the responsible fiscal officers of the Commonwealth that, exclusive of unexpended balances, the pre-



dictable available sum for appropriation is \$72,558,054.71, and much less if these balances were all drawn from the treasury.

I repeatedly urged the responsible leaders in charge of the legislative program that it was imperative to provide additional revenue if the business of the State were to be adequately cared for. We had revenue bills prepared imposing a small and entirely reasonable tax upon coal, oil, and natural gas. These natural commodities, the gift of Providence to our people, are being rapidly depleted. They are consumed more largely without than within the State, and our people are denied any revenue from these disappearing sources of wealth. We also had a bill prepared placing a tax of one mill upon the capital stock of manufacturing corporations. This tax would in no important way have affected the State's well-known policy of fostering industry and manufacture. This was not opposed by many leading manufacturers. We had reason to believe that these measures would pass. Had they passed, this unjustifiably drastic tax on direct inheritance would have been unnecessary and would not have been approved.

The bills above-named were passed by a large vote in the House and met an untimely death in the committees of the Senate.

The same influences that clamored for large appropriations steadily opposed these taxes upon natural resources and upon the capital stock of manufacturing corporations. The Senate committees thus chose deliberately to tax the estates of poor and rich alike, rather than to tax these natural resources which to-day are selling at such an advanced price as to make the owners abnormally rich in dividends and in profits, and rather than to tax manufacturing corporations now extraordinarily prosperous and abundantly able to pay the proposed tax. The whole procedure was most unfair and against the welfare of all the people.

Some of the increased expenditures authorized by the Assembly are in this national crisis necessary. They cannot be refused or withheld. To reconvene the Assembly to enact revenue producing laws is a costly procedure and might not result in any substantial service to the people since the same potential influences that so carefully guarded certain special interests would again, doubtless, assert themselves. But it may well be that a lesson of this sort is necessary to teach the people the truth.

This direct inheritance tax applies to all property of decedents going to direct heirs. It covers estates of every size, even to the smallest. There are no exemptions. In some States there is a graded tax, with exemptions to the small estates. Under our Constitution this is forbidden, and the approval of this bill is, in its last analysis, based upon the fact that this Assembly has passed a resolution providing for an amendment to the Constitution which will correct the injustices of this measure. This can be and should be adopted by the people in 1919, and the Assembly should then so amend this act as to bring the relief that all fair-minded and unselfish men will approve.

MARTIN G. BRUMBAUGH.

The foregoing is a true and correct copy of the act of the General Assembly No. 318.

CYRUS E. WOODS,

Secretary of the Commonwealth

#### ACT OF 1919.

##### In Effect as to All Persons Dying After June 20, 1919.

An Act Providing for the imposition of and collection of certain taxes upon the transfer of property passing from a decedent who was a resident of this Commonwealth at the time of his death and of property within this Commonwealth of a decedent who was a nonresident of the Commonwealth at the time of his death and making it unlawful for any corporation of this Commonwealth or national banking association located therein to

transfer the stock of such corporation or banking association *standing in the name of any such decedent* until the tax on the transfer thereof has been paid and providing penalties and citing certain acts for repeal.

## ARTICLE I.

### *Imposition and Rate of Tax.*

Section 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same* That a tax shall be and is hereby imposed upon the transfer of any property real or personal or of any interest therein or income therefrom in trust or otherwise to persons or corporations in the following cases:

(a) When the transfer is by will or by the intestate laws of this Commonwealth from any person dying seized or possessed of the property while a resident of the Commonwealth whether the property be situated within this Commonwealth or elsewhere.

(b) When the transfer is by will or intestate laws of real property within this Commonwealth or of goods wares or merchandise within this Commonwealth or of shares of stock of corporations of this Commonwealth or of national banking associations located in this Commonwealth and the decedent was a nonresident of the Commonwealth at the time of his death.

(c) When the transfer is of property made by a resident or is of real property within this Commonwealth or of goods wares and merchandise within this Commonwealth or of shares of stock of corporations of this Commonwealth or of national banking associations located in this Commonwealth made by a nonresident by deed grant bargain sale or gift made in contemplation of the death of the grantor vendor or donor or intended to take effect in possession or enjoyment at or after such death.

(d) When any person or corporation comes into the possession or enjoyment by a transfer from a resident or nonresident decedent when such nonresident decedent's property consists of real property within this Commonwealth or of shares of stock of corporations of this Commonwealth or of national banking associations located in this Commonwealth of an estate in expectancy of any kind or character which is contingent or defeasible transferred by an instrument taking effect after the passage of this act or of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of this act.

§ 2. All taxes imposed by this act shall be at the rate of two per centum upon the clear value of the property subject to such tax passing to or for the use of father mother husband wife children lineal descendants born in lawful wedlock *legally* adopted children children of a former husband or wife or the wife or widow of the son of a person dying seized or possessed thereof and also on the clear value of such property passing from the mother of an illegitimate child or from any person of whom the mother is a lineal descendant to such child his wife or widow and passing from an illegitimate child to his mother and at the rate of five per centum upon the clear value of the property subject to such tax passing to or for the use of any other person or persons bodies corporate or politic to be paid for the use of the Commonwealth. *In ascertaining the clear value of such estates the only deductions to be allowed from the gross values of such estates shall be the debts of the decedent and the expenses of the administration of such estates and no deduction whatsoever shall be allowed for or on account of any taxes paid on such estate to the Government of the United States or to any other State or territory.*

§ 3. Where there is a transfer of property by a devise descent bequest gift or grant liable to the tax hereinbefore imposed which devise descent bequest gift or grant is to take effect in possession or to come into actual enjoyment after the expiration of any one or more life estates or a period of years the tax on such estate shall not be payable nor shall interest begin to run thereon until the person liable for the same shall come into actual possession of such

estate by the termination of the estates for life or years. The tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner but the owner may pay the tax at any time prior to his coming into possession. In such cases the tax shall be assessed on the value of the estate at the time of the payment of the tax after deducting the value of the life estate or estates for years the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid. The owner of any such personal estate passing to him from a resident decedent shall make a full return of the same to the register of wills within one year from the death of the decedent and within that time enter into security for the payment of the tax to the satisfaction of such register. In case of failure so to do the tax shall be immediately payable.

The owner of any such personal estate passing to him from a nonresident decedent shall make a full return of the same to the Auditor-General within one year from the death of the decedent and within that time enter into security for the payment of the tax to the satisfaction of the Auditor-General. In case of failure so to do the tax shall be immediately payable and collectible.

## ARTICLE II.

### *Payment of Tax in cases of Resident Decedents.*

§ 10. The register of wills of the county in which letters testamentary or of administration are granted upon the estate of any person dying seized or possessed of property while a resident of the Commonwealth shall appoint an appraiser whenever occasion may require to appraise the value of the property or estate of which such decedent died seized or possessed and hereinbefore subjected to tax. Such appraiser shall make a fair conscionable appraisement of such estates and assess and fix the cash value of all annuities and life estates growing out of said estates upon which annuities and life estates the tax imposed by this act shall be immediately payable out of the estate at the rate of such valuation.

§ 11. The compensation of such appraisers shall be as follows namely: For each day during which an appraiser shall actually be engaged in making appraisements of property subject to the tax he shall receive the sum of five dollars. If it shall be necessary for the appraiser to travel from his place of residence to appraise property subject to the tax he shall be allowed such actual necessary traveling expenses as he may incur which expenses shall be itemized in a sworn statement to be returned to the register and subject to the final approval of the Auditor-General.

§ 12. Whenever because of the complicated nature of an estate subject to the payment of such tax the interest of the Commonwealth shall require the appointment as appraiser of such estate of a person possessed of expert or technical knowledge to ascertain the value thereof reasonable additional compensation shall be allowed such appraiser for the exercise of such expert or technical knowledge. In case where after the appointment of an appraiser it shall appear that the proper appraisement of said estate will require the services of a person possessed of expert or technical knowledge whereof the appraiser appointed is not possessed the appraiser may employ the services of a person possessed of expert or technical knowledge to assist him in the appraisement and for such services the person so employed shall receive reasonable compensation. In all such cases the register of wills appointing the appraiser shall certify to the Auditor-General that there is an actual necessity for the appointment of an appraiser possessed of expert or technical knowledge or that the appraiser already appointed to appraise the estate in question should be assisted by a person possessed of such knowledge. No person shall be appointed as such expert appraiser or as expert assistant to the appraiser until the approval of the Auditor-General of said appointment is first obtained nor shall any payment be made to any appraiser or to any person employed by him under this section until an itemized statement of the services performed and the compensation recommended shall have been ren-

dered under oath or affirmation to the Auditor-General for his approval and shall have received the same. No clerk or other person employed in the office of a register of wills shall be appointed as an expert appraiser of an estate subject to the payment of such tax nor as an expert to assist the appraiser of such estate.

§ 13. Any person not satisfied with any appraisement of the property of a resident decedent may appeal within thirty days to the orphans' court on paying or giving security to pay all costs together with whatever tax shall be fixed by the court. Upon such appeal the court may determine all questions of valuation and of the liability of the appraised estate for such tax subject to the right of appeal to the Supreme or Superior Court.

§ 14. The register of wills shall enter in a book to be provided at the expense of the Commonwealth which shall be a public record the returns made by all appraisers appointed by him under the provisions of this act opening an account in favor of the Commonwealth against each decedent's estate. The register may give certificates of payment of such tax from such record. The register shall transmit to the Auditor-General on the first day of each month a statement of all returns made by appraisers during the preceding month upon which the taxes have been paid or remain unpaid which statement shall be entered by the Auditor-General in a book to be kept for that purpose. Whenever any such tax shall have remained due and unpaid for one year the register may apply to the orphans' court by bill or petition to enforce the payment of the same whereupon the court having caused notice to be given to the owner of the real estate charged with the tax and to such other person as may be interested shall proceed according to equity to make such decrees or orders for the payment of the tax out of such real estate as shall be just and proper.

§ 15. If the register shall discover upon the transfer of any property of a resident decedent that any tax imposed by this act has not been paid the orphans' court may cite the executors or administrators of the decedent whose estate is subject to the tax to file an account or to appear on a certain day and show cause why the tax should not be paid. When personal service cannot be had notice shall be given for four weeks once a week in at least one newspaper published in the county and in the legal periodical designated by the rules of court of the county for the publication of legal notices. If the tax shall be found to be due the delinquent shall pay the tax and costs. The Auditor-General in the settlement of accounts of any register may allow him costs of advertising and other reasonable fees and expenses incurred in the collection of the tax.

§ 16. The executor or administrator or other trustee paying any legacy or share in the distribution of any estate of a resident decedent subject to the said tax shall deduct therefrom at the rate of two per centum upon the whole legacy or sum paid to or for the use of father mother husband wife children lineal descendants born in lawful wedlock *legally* adopted children children of a former husband or wife or the wife or widow of the son of a person dying seized or possessed thereof and upon the whole legacy from the mother of an illegitimate child or from any person of whom the mother is a lineal descendant to such illegitimate child his wife or widow or from an illegitimate child to his mother and at the rate of five per centum upon the whole legacy or sum paid to or for the use of any other person or persons or bodies corporate or politic or if not money he shall demand payment of a sum to be computed at the same rate upon the appraised value thereof. No executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed subject to tax except on the payment into his hands of a sum computed on its value as aforesaid. In case of neglect or refusal on the part of such legatee to pay the same such specific legacy or article or so much thereof as shall be necessary shall be sold by such executor or administrator at public sale after notice to such legatee and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law. Every sum of money retained by any executor or administrator or paid into his hands on account of any legacy or dis-

tributive share for the use of the Commonwealth shall be paid by him without delay.

§ 17. Whenever any real estate of which any resident decedent may die seized shall be subject to the tax the executors and administrators shall give information thereof to the register of the county where administration has been granted within six months after they undertake the execution of their respective duties or if the fact be not known to them within that period then within one month after the same shall have come to their knowledge. The owners of such estate immediately upon its vesting shall give information thereof to the register having jurisdiction of the granting of administration.

§ 18. Any executor or administrator on the payment of said tax shall take duplicate receipts from the register both of which shall be forwarded forthwith to the Auditor-General who shall charge the register receiving the money with the amount and seal with the seal of his office and countersign the original receipt and transmit it to the executor or administrator whereupon it shall be a proper voucher in the settlement of the estate. In no event shall an executor or administrator be entitled to a credit in his account by the register unless the receipt is so sealed and countersigned by the Auditor-General.

§ 19. When a legacy subject to tax under this act is given to any person for life or for a term of years or for any other limited period upon a condition or contingency if the same be money the tax thereon shall be retained upon the whole amount but if not money application shall be made to the orphans' court to make apportionment if the case require it of the sum to be paid by such legatees and for such further order relative thereto as equity shall require.

Whenever any such legacy shall be charged upon or payable out of real estate the heirs or devisee before paying the same shall deduct therefrom at the rates aforesaid and pay the amount so deducted to the executor and the same shall remain a charge upon such real estate until paid and the payment thereof shall be enforced by the decree of the orphans' court in the same manner as the payment of such legacy may be enforced.

§ 20. Whenever debts shall be proved against the estate of a resident decedent after distribution of legacies from which the tax has been deducted in compliance with this act and the legatee is required to refund any portion of a legacy a portion of the said tax shall be repaid to him by the executor or administrator if the tax has not been paid into the State or county treasury or by the county treasurer if it has been so paid.

§ 21. The registers of wills upon their filing with the Auditor-General the bond hereinafter required shall be the agents of the Commonwealth for the collection of the said tax in the case of resident decedents. For services rendered in collecting and paying over the same they shall be allowed to retain for their own use upon the gross amount collected during any year five per centum upon the tax collected if such tax shall amount to a sum of fifty thousand (\$50,000) dollars or less three per centum on the amounts collected in excess of fifty thousand (\$50,000) dollars and not exceeding one hundred thousand (\$100,000) dollars one per centum on the amounts collected in excess of one hundred thousand (\$100,000) dollars and not over two hundred thousand (\$200,000) dollars and one-half of one per centum on the amounts collected in excess of two hundred thousand (\$200,000) dollars and not over one million (\$1,000,000) dollars and one-quarter of one per centum on the amounts collected in excess of one million (\$1,000,000) dollars.

§ 22. Each register shall give bond to the Commonwealth in such penal sum as the orphans' court may direct with two or more sufficient sureties for the faithful performance of the duties hereby imposed and for the regular accounting and paying over of the amounts to be collected and received. This bond when executed and approved shall be forwarded to the Auditor-General.

Until such bond and security be given the said tax shall be collected by the county treasurer. In such cases all the provisions of this act relating to collection and payment by registers shall apply to the county treasurer.

§ 23. Each register of wills shall on the first Monday of each month make return to the Auditor-General and return and payment to the State Treasurer of all taxes imposed and received under this act stating for what estate paid upon. All taxes collected by him and not paid over within one month after his quarterly return of the same he shall pay interest at the rate of twelve per centum per annum until paid.

### ARTICLE III.

#### *Payment of tax in cases of nonresident decedents.*

§ 25. Whenever the transfer is of property within the Commonwealth from a decedent who was a nonresident of the Commonwealth at the time of his death the Auditor-General whenever occasion may require on the application of any interested party or upon his own motion shall appoint an appraiser to appraise the value of such property hereinbefore subjected to tax. Every such appraiser shall forthwith give notice by mail to such persons as the Auditor-General shall direct of the time and place when and where he will appraise such property. He shall at such time and place make a fair, conscionable appraisement of said property and assess and fix the cash value of all annuities and life estates growing out of said estates upon which annuities and life estates the tax imposed by this act shall be immediately payable out of the estate and he shall make report thereof and of such value in writing to the said Auditor-General which report shall be filed in the office of the Auditor-General and the Auditor-General shall immediately give notice thereof by mail to all parties known by him to be interested therein.

§ 26. Whenever the interest of the Commonwealth may require it the Auditor-General is hereby authorized to appoint such additional appraisers or employ such expert services as he may deem best to appraise the property of any nonresident decedent subject to the tax hereinbefore imposed. The compensation of all appraisers appointed and of all persons employed by the Auditor-General in making such appraisement shall be fixed by him and together with all necessary expenses incurred by them in the performance of their duties shall be paid out of any unexpended funds appropriated to the department of the Auditor-General upon his warrant.

§ 27. Any person not satisfied with such appraisement as made by an appraiser appointed by the Auditor-General may appeal within thirty days to the Court of Common Pleas of Dauphin county on paying or giving security to pay all costs together with whatever tax shall be fixed by the court. Upon such appeal the court may determine all questions of valuation and the liability of the appraised estate for such tax subject to the right of appeal to the Supreme or Superior Court.

§ 28. Every corporation or person to whom any property within this Commonwealth passes from a nonresident decedent subject to the tax hereinbefore imposed or the executor administrator trustee of such a decedent or other party in interest shall immediately upon the death of the decedent give notice to the Auditor-General of such property and the location thereof.

§ 29. Whenever any tax imposed by this act upon the transfer of property of a nonresident decedent within this Commonwealth shall have remained due and unpaid for one year the Auditor-General may apply to the Court of Common Pleas of Dauphin county or of any county in which such property may be situated by bill or petition to enforce the payment of the same whereupon the court having caused notice to be given to the owner of the property subject to the tax or to the executor administrator or trustee of the decedent and to such other parties as may be interested shall proceed according to equity to make such decree or order for the payment of the tax out of such property as shall be just and proper.

And the Auditor-General is hereby further authorized and empowered to bring suit or suits in the name of the Commonwealth of Pennsylvania in any court of this Commonwealth or elsewhere for the recovery of any sum or sums due owing or payable for or on account of any tax imposed by the provisions of this act upon the transfer of property within this Commonwealth of which

a nonresident of the Commonwealth may have died seized or possessed with costs of suit.

§ 30. The Auditor-General shall enter in a book which shall be a public record the returns made by all appraisers appointed by him to appraise the property of a nonresident decedent within this Commonwealth subject to the tax hereinbefore imposed opening on account in favor of the Commonwealth against each said decedent's estate. The Auditor-General may give certificates of payment of said tax from said record and upon payment thereof shall give a receipt therefor to the party paying the same.

§ 31. The Auditor-General shall collect all the taxes due or owing the Commonwealth on account of the tax upon the transfer of the property of a nonresident decedent as hereinbefore imposed and shall on the first Monday of each month make report to the State Treasurer of all taxes so collected by him under the provisions of this act during the preceding month stating for what estate paid upon.

§ 32. On the transfer of property in this Commonwealth of a nonresident decedent if all or any part of the estate of such decedent wherever situated shall pass to persons or corporations who would have been taxable under this act if such decedent had been a resident of this Commonwealth such property located within this Commonwealth shall be subject to a tax which said tax shall bear the same ratio to the entire tax which the said estate of such decedent would have been subjected to under this act if such nonresident decedent had been a resident of this Commonwealth as such property located in this Commonwealth bears to the entire estate of such nonresident decedent wherever situated Provided That nothing in this clause contained shall apply to any specific bequest or devise of property in this Commonwealth.

#### ARTICLE IV.

##### *Provisions Relating to the Collection of the Tax Both in the Case of Resident and Nonresident Decedents.*

§ 35. No executor administrator or trustee of any decedent resident or nonresident shall assign or transfer any stock of any corporation of this Commonwealth or of any national banking association located in this Commonwealth standing in the name of such decedent or in the joint names of such decedent and one or more other persons or in trust for a decedent subject to the tax hereinbefore imposed until such tax has been paid unless the Auditor-General consents to such transfer prior to such payment in manner hereinafter provided.

§ 36. No corporation of this Commonwealth or national banking association located in this Commonwealth shall transfer any stock of such corporation or of such banking association standing in the name of a decedent whether resident or nonresident or in the joint names of a decedent and one or more persons or in trust for such decedent unless the Auditor-General has filed with said corporation or national banking association a certificate that the tax imposed by this act on the transfer of such stock has been fully paid or otherwise consents thereto in writing and it shall be lawful for the Auditor-General either personally or by representative to examine the shares of stock of such decedent at the time of such transfer and also the transfer books of said corporation or association showing such transfer. Any such corporation or association making any transfer of the stock standing in the name of a decedent resident or nonresident or in the joint names of a decedent and one or more other persons or in trust for such decedent in violation of the foregoing provisions shall be liable for the payment of the amount of the taxes to which the property so transferred is subject under the provisions of this act and in addition thereto a penalty of one thousand dollars which liability for such tax and interest or the penalty above prescribed or both shall be enforced in an action of debt in the name of the Commonwealth of Pennsylvania brought by the Auditor-General thereof and the same when recovered shall be paid into the treasury of the Commonwealth of Pennsylvania for the use of the Commonwealth.

§ 37. Whenever the tax imposed by this act upon the transfer of the stock of any corporation of this Commonwealth or national banking association located in this Commonwealth standing in the name of a decedent resident or nonresident or in the joint names of the decedent and one or more persons or in trust for such decedent has been paid it shall be the duty of the Auditor-General upon the request of any interested party or of said corporation or association or upon his own motion to file with the said corporation or banking association a certificate of such payment and the Auditor-General is hereby further authorized and empowered in his discretion to consent to the transfer of such stock prior to the payment of the said taxes whenever he deems such transfer may be so made without prejudice or peril to the rights of the Commonwealth.

§ 38. If the tax is paid within three months after the death of the decedent a discount of five per centum shall be allowed. If the tax is not paid at the end of one year from the death of the decedent interest shall be charged at the rate of twelve per centum per annum on such tax. Where because of claims made upon the estate litigation or other unavoidable cause of delay the estate of any decedent or any part thereof cannot be settled up at the end of the year interest at the rate of six per centum per annum shall be charged upon the tax arising from the unsettled part thereof from the end of such year until there be default. Where real or personal estate withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto subject to such tax has not been productive to the extent of six per centum per annum the proper parties shall not pay a greater amount as interest to the Commonwealth than they have realized or shall realize from such estate during the time the same has been or shall be withheld as aforesaid.

Section 39. The lien of all taxes imposed by this act shall continue until the tax is settled and satisfied and shall be limited to the property chargeable therewith. All such taxes shall be sued for within five years after they are due otherwise they shall be presumed to have been paid and cease to be a lien as against any purchasers of real estate.

§ 40. In all cases where any amount of such tax is paid erroneously the State Treasurer on satisfactory proof rendered to him by the register of wills or Auditor-General of such erroneous payment may refund and pay over to the person paying such tax the amount erroneously paid. All such applications for the repayment of such tax erroneously paid in the treasury shall be made within two years from the date of payment except when the estate upon which such tax has been erroneously paid shall have consisted in whole or in part of a partnership or other interest of uncertain value or shall have been involved in litigation by reason whereof there shall have been an over-valuation of that portion of the estate on which the tax has been assessed and paid which over-valuation could not have been ascertained within said period of two years in such case the application for repayment shall be made to the State Treasurer within one year from the termination of such litigation or ascertainment of such over-valuation.

§ 41. Where a testator appoints or names one or more executors or trustees and makes a bequest or devise of property to them in lieu of their commissions or allowances or appoints them his residuary legatees and said bequests devise or residuary legacy exceeds what would be a fair compensation for their services such excess shall be subject to the payment of the tax at the rate in each case provided for in this act.

§ 42. It shall be a misdemeanor for an appraiser to take any fee or reward from any executor or administrator legatee lineal descendant or heir of any decedent and for any such offense the register or Auditor-General as the case may be shall dismiss him from such service. Upon conviction of such misdemeanor such appraiser shall be fined not exceeding five hundred dollars or imprisonment not exceeding one year or both.



## ARTICLE V.

*Definitions and Repeals.*

§ 45. The words "estate" and "property" wherever used in this act except where the subject or context is repugnant to such construction shall be construed to mean the interest of the testator intestate grantor bargainer or vendor passing or transferred to the individual or specific legatee devisee heir next of kin grantee donee or vendee not exempt under the provisions of this act whether such property be situated within or without this Commonwealth.

The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein in possession or enjoyment present or future by distribution by statute descent devise bequest grant deed bargain sale or gift.

§ 46. The provisions of this act are severable and in the event of any provision hereof being declared unconstitutional it is hereby declared as the legislative intent that such unconstitutional provision shall not affect the validity of this act.

§ 47. The act approved May sixth one thousand eight hundred and eighty-seven entitled "An act to provide for the better collection of collateral inheritance taxes" and the amendments and supplements thereto and the act approved the eleventh day of July one thousand nine hundred and seventeen entitled "An act for the imposition and collection of certain inheritance taxes" and all other acts or parts of acts inconsistent with the provisions of this act are hereby repealed but nothing in this repealer shall affect or impair the lien of any taxes heretofore assessed or any tax due owing or payable or any remedies for the collection of the same or to surrender any remedies powers rights or privileges acquired by the Commonwealth under said act approved May sixth one thousand eight hundred and eighty-seven entitled "An act to provide for the better collection of collateral inheritance taxes" its amendments and supplements and the said act approved the eleventh day of July one thousand nine hundred and seventeen entitled "An act for the imposition and collection of certain inheritance taxes" or to relieve any person or corporation from any tax or penalty imposed by said acts.

## RHODE ISLAND.

Imposes two taxes: First upon the entire estate for the right to transfer; second, upon each beneficiary for the right to receive.

Taxes only real estate of nonresidents within the State.

First tax.—For right to transfer:

On the entire estate one-half of 1% in excess of \$5,000.

Second tax:

On each beneficiary — for the right to receive.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Exemption	In excess of ex- emption to \$50,000	\$50,000 to \$250,000	\$250,000 to \$500,000	\$500,000 to \$750,000	\$750,000 to \$1,000,000	In excess of \$1,000,000
Grandparent, parent, husband, wife, child, brother, sister, nephew, niece, son-in-law, daughter-in-law, adopted or mutually acknowledged child, lineal descendant.	\$25,000 to widow or minor child. Others \$25,000, but when two or more of class mentioned they divide exemption and descendants allowed exemption per stirpes, not per capita.	½%	1%	1½%	2%	2½%	3%
All others excepting corporations and institutions except by charter or laws of state and similar foreign corporations which are exempt altogether.	\$1,000; but descendants take interest in exemption per stirpes, not per capita.	5%	6%	7%	7%	7%	8%

## LAWS OF 1916, CHAPTER 1339, BECAME A LAW FEB. 22, 1916.

An Act taxing the net estates of decedents and inheritances, legacies and gifts.

*It is enacted by the General Assembly as follows:*

Section 1. A tax shall be and is hereby imposed upon the net estate of every resident decedent, and upon the net estate of every nonresident decedent, consisting of real property located within this State, or any interest therein, as a tax upon the right to transfer. Such tax shall be imposed at the rate of one-half of one per centum upon the excess value of each said estate over \$5,000: *Provided*, that in the case of the estate of a nonresident decedent only such proportion of said exemption of \$5,000 shall be allowed, as the value of the real property located in Rhode Island, or any interest therein, bears to the value of the entire estate wherever located; *and provided, further*, that the executor, administrator or trustee of such nonresident decedent's estate shall file with the board of tax commissioners a sworn statement showing the full and fair cash value of the entire estate. If said statement is not filed as herein provided, no exemption shall be allowed.

§ 2. The value of the net estate of a resident decedent for the assessment of the tax imposed by section 1 of this act shall be ascertained by taking the full and fair cash value of the real property located within this State and of any interest therein, and of the tangible and intangible personal property of the decedent at the date of his decease, including the property and interests described in paragraphs 2, 3 and 4 of section 5 of this act, and adding thereto all gains made during the settlement of the estate in reducing the intangible personal property thereof to possession, except so much of such intangible personal property as is represented by bonds and stock in any corporation, and

income accruing after death. From the value thus obtained there shall be deducted the amount of all claims allowed against the estate, all funeral expenses and expenses of administration, the amount of the allowance made for the support of the widow and family of the decedent by the probate court in accordance with law, and the amount at the death of the decedent of all unpaid mortgages, except mortgages on real property not located within this State, not deducted in the appraisal of the property mortgaged; and there shall be also deducted all losses incurred during the settlement of the estate in the reduction of the intangible personal property to possession, except so much of such intangible personal property as is represented by bonds and stock in any corporation.

The value of the net estate of a nonresident decedent for the assessment of the tax imposed by section 1 of this act shall be ascertained by taking the full and fair cash value of the real property located in Rhode Island, and any interest therein, including such real property and interests in real property as are described in paragraphs 2, 3 and 4 of section 5 of this act, and deducting therefrom such proportion of the indebtedness of the entire estate of such nonresident decedent as the value of said real property and interests therein, and of any tangible personal property of such decedent located within this State bears to the value of the entire estate: *Provided*, that only the excess of such proportion of indebtedness over and above the value of said tangible personal property shall be deducted from the appraised value of said real property; *and provided, further*, that the executor, administrator, or trustee, of such nonresident decedent's estate shall file with the board of tax commissioners a sworn statement showing the full and fair cash value of the entire estate and the indebtedness of said estate. If said statement is not filed as herein provided, only such debts and expenses as are chargeable to the said real property under the laws of this State shall be deducted. The full and fair cash value of the net estate of a decedent shall be determined by the board of tax commissioners as aforesaid in accordance with the provisions of sections 22, 23, 24 and 31 of this act.

§ 3. The tax imposed by section 1 of this act shall be assessed upon the full and fair cash value of the net estate determined by the board of tax commissioners as hereinbefore provided and notice of the amount of said tax shall be mailed to the executor, administrator, or trustee by said board, but failure to receive said notice shall not excuse the nonpayment of or invalidate said tax. The board of tax commissioners shall certify the amount of such tax to the General Treasurer, who shall receive and collect the taxes so assessed in the same manner and with the same powers as are prescribed for and given to the collectors of taxes by chapter 60 of the General Laws and by any acts in amendment thereof or in addition thereto. Such tax shall be due and payable by the executor, administrator, or trustee of the estate immediately upon notification of the amount thereof, and if not paid within thirty days thereafter shall bear interest at the rate of eight per centum per annum from the date of such notification. Said tax shall be paid direct to the General Treasurer of the State for the use of the State, and shall be and remain a lien upon the estate until the same shall be paid, and the executors, administrators, or trustees shall be personally liable for such tax until the same is paid. An executor, administrator, or trustee may deposit with the General Treasurer a sum of money sufficient in the opinion of the board of tax commissioners to pay the tax which may become due under the provisions of section 1 of this act, and when said tax has been determined and certified as aforesaid the General Treasurer shall repay to said executor, administrator, or trustee the difference between the tax certified and the amount deposited, and the lien upon the estate hereinbefore imposed shall be discharged by the acceptance of said deposit.

§ 4. Whenever claims shall be allowed against the estate of a decedent after the payment of the tax imposed by section 1 of this act the General Treasurer shall upon receiving a certified copy of the records of the probate court or other court of competent jurisdiction showing the proof of the allowance of such claims, or upon receipt of such other proof thereof as may be satisfactory

to the board of tax commissioners, refund such equitable proportion of the tax represented by such claims to the executor, administrator, or trustee of such estate, without any further act or resolution making appropriation therefor. Any executor, administrator, or trustee may appeal from the assessment of said tax as provided in section 26 of this act.

§ 5. A tax shall be and is hereby imposed upon any transfer by a resident of this State of any real property within the State, or any tangible or intangible personal property, or interest therein or income therefrom, and by a non-resident of this State of any real property within the State or any interest therein, to any person or persons, in trust or otherwise, as a tax upon the right to receive, in the following cases:

(1) When the transfer is under a will or by the statutes of descent and distribution of this State.

(2) When the transfer is made by deed, grant, bargain, sale or gift, without valuable and adequate consideration, and in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. Such tax shall be imposed when any such person becomes beneficially entitled, in possession or expectancy, to any property, or interest therein, or the income therefrom by any such transfer, whether made before or after the passage of this act.

(3) Whenever any person shall exercise a power of appointment, derived from any disposition of property made whether before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the person thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, and shall take effect at the time of such omission or failure.

(4) Whenever any person during his life shall appoint a trustee naming himself or others as beneficiaries, and providing for the administration of said trust after his death or providing for a termination of said trust and a distribution of the trust estate or any part thereof at his death, a transfer taxable under the provisions of this act shall be deemed to take place upon the death of the creator of said trust.

(5) Dower and curtesy in property located within the State shall be deemed to be interests in real property subject to the tax imposed by this section.

§ 6. All taxes imposed by section 5 of this act shall be assessed by the board of tax commissioners upon the full and fair cash value of the property transferred at the rate hereinafter described and only upon the excess of the exemption hereinafter granted, to be paid direct to the general treasurer of the State, for the use of the State, and all executors, administrators, or trustees shall be personally liable for any and all such taxes until the same are paid. Notice of the amount of said taxes shall be mailed to the executor, administrator, or trustee liable therefor, by said board, and upon request made to them to any other person by whom said taxes are payable, but failure to receive said notice shall not excuse the non-payment of or invalidate said taxes; and unless appeal is taken from such assessment, as hereinafter provided, the amount of taxes so assessed shall be final. Said board shall certify the amount of such taxes to the general treasurer who shall receive and collect the taxes so assessed in the same manner and with the same powers as are prescribed for and given to the collectors of taxes by chapter 60 of the General Laws, and by any acts in amendment thereof or in addition thereto. Payment of the amount so certified shall be a discharge of the tax. Said taxes shall be and remain a lien upon the property transferred, and upon all property acquired by the executor, administrator, or trustee in substitution therefor

while the same remains in his hands, until the said taxes are paid or a bond given as hereinafter provided, but said lien shall not affect any tangible or intangible personal property after it has passed to a *bona fide* purchaser for value: Provided, however, that nothing herein contained shall give the owner of any securities specified in section 27 of this act the right to have the same transferred to him by the corporation, association, company or trust issuing the same, until the permit required by said section 27 shall have been filed as therein provided. The lien charged as aforesaid upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel, or by the filing and acceptance of a bond as provided in section 11 of this act, or by an order of the board of tax commissioners transferring such lien to other real estate owned by the person to whom said real estate or separate parcel thereof passes. The heir, devisee or other donee shall be personally liable for the tax on such real estate, as well as the executor, administrator, or trustee; and if the executor, administrator, or trustee pays such tax, he shall, unless the same is made an expense of administration by the will or other instrument, have the right to recover such tax from the heir, devisee or other donee of such real estate.

§ 7. When any property or any beneficial interest therein or income therefrom shall pass to or for the use of any grandparent, parent, husband, wife, child, brother, sister, nephew, niece, wife or widow of the son, or husband or widower of the daughter, or any child adopted in conformity with the laws of Rhode Island, or the laws of any other State or country, or any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, the tax so imposed upon the full and fair cash value of such property, beneficial interest therein or income therefrom shall be as follows: At the rate of one-half of one per centum upon all amounts in excess of the exemption hereinafter specified and not exceeding \$50,000; at the rate of one per centum upon all amounts in excess of \$50,000 and not exceeding \$250,000; at the rate of one and one-half per centum upon all amounts in excess of \$250,000 and not exceeding \$500,000; at the rate of two per centum upon all amounts in excess of \$500,000 and not exceeding \$750,000; at the rate of two and one-half per centum upon all amounts in excess of \$750,000 and not exceeding \$1,000,000; at the rate of three per centum upon all amounts in excess of \$1,000,000.

§ 8. When any property or any beneficial interest therein or income therefrom shall pass to or for the use of any person not mentioned in section 7 of this act, the tax so imposed upon the full and fair cash value of such property, beneficial interest therein or income therefrom, shall be as follows: At the rate of five per centum upon all amounts in excess of the exemption hereinafter specified and not exceeding \$50,000; at the rate of six per centum upon all amounts in excess of \$50,000 and not exceeding \$250,000; at the rate of seven per centum upon all amounts in excess of \$250,000 and not exceeding \$1,000,000; at the rate of eight per centum upon all amounts in excess of \$1,000,000.

§ 9. The following exemptions from the taxes imposed under the provisions of section 5 of this act are hereby allowed:

(1) All property or interests transferred to any corporation, association, or institution, located in Rhode Island, which is exempt from taxation by charter or under the laws of this State, or to any corporation, association, or institution, located outside of this State, which if located within this State would be exempt as aforesaid, or to any person in trust for the same, or to any city or town in this State for public purposes, shall be exempt.

(2) Property or interests therein of a clear value of \$25,000, to be taken out of the first \$50,000 transferred to each of the persons mentioned in section 7 of this act, shall be exempt: *Provided*, that whenever two or more persons mentioned in section 7 of this act, other than the wife and minor children of a decedent, are beneficially interested, in possession, enjoyment, or expectancy, in one and the same transfer of property, only such proportion of \$25,000 shall be allowed as an exemption to one such person as the value of

his share or interest bears to the total value of such property; *and provided, further*, that the descendants of any person mentioned in section 7 shall be allowed the exemption of the person they represent, per stirpes and not per capita.

(3) Property or interests therein of a clear value of \$1,000, to be taken out of the first \$50,000 transferred to any person other than the persons mentioned in section 7 of this act, shall be exempt: *Provided*, that the descendants of any such person shall be allowed the exemption of the person they represent, per stirpes and not per capita.

(4) In the case of the transfer of a nonresident decedent's real property located within this State, or of any interest therein, only such proportion of the exemptions herein specified shall be allowed as the value of the transferee's share in said real property, or any interest therein, bears to the value of said transferee's share in the entire estate of said nonresident decedent: *Provided*, that the executor, administrator, or trustee of such nonresident decedent's estate or the transferee shall file with the board of tax commissioners a sworn statement exhibiting the full and fair cash value of the entire estate. If said statement is not filed as herein provided, no exemption shall be allowed.

§ 10. Makes taxes imposed by section 5 due six months after executor or administrator has filed his bond and allows a discount of 4% if they are paid within that time. If not paid within nine months interest charged at 8%, which may be reduced at 6% in case of unavoidable delay from accrual to time when cause of delay is removed, after that 8%. In case of trust deeds taxed under subdivision 4 of section 5 the tax is due when the amount thereof is certified by the board of tax commissioners and if paid within thirty days thereafter a discount of 4% is allowed, after the thirty days' interest at 8% is charged.

§ 11. Provides that if remaindermen wish to defer payment until they receive the property they may file a bond, with the approval of the board of tax commissioners, in three times the amount of the tax, conditioned for the payment of the tax with interest at 4% from date of accrual. The bond must be renewed every five years and the obligor undertakes to notify the board of tax commissioners when he comes into actual possession of the property. The filing and acceptance of the bond discharges the lien of the tax and frees personal representatives from liability.

§ 12. Provides for a proportionate refund of the tax when claims have been proved against the estate after distribution.

§ 13. Provides for the computation of life estates and remainders on American experience tables at rate of 5%.

§ 14. Provides that no allowance shall be made for contingencies or conditions that may defect, diminish or abridge the estate of one presently entitled in fixing its value but refund is made if the event happens, but this does not apply to a life estate which may be diminished or defeated by the act of the beneficiary, such estates are taxed as if there were no such possibility.

§ 15. Provides that the tax shall be fixed at the lowest possible rate on contingent remainders, but if the remaindermen who ultimately succeed are taxable at a higher rate they must then pay the difference.

§ 16. Provides that where the tax has not been collected or has been suspended on contingent remainders they shall be taxed at full cash value when they fall in without deducting value of expired life interest.

§ 17. Taxes, bequests to executors in lieu of commissions on the excess over reasonable value of services.

§ 18. Provides that unless the will directs the tax to be paid from the residue as an expense of administration and that residue is sufficient, the executor or administrator must deduct the tax from the legacy if in money and shall not deliver any specific legacy or property until the tax has been paid thereon by the legatee. If the legacy is charged on real estate the heir must deduct the tax, the tax remains a lien and its payment may be enforced in the same manner as the legacy. If money is given for a limited period the tax must be deducted from the whole amount, but if property is so given the

board of tax commissioners must make an apportionment among the beneficiaries.

§ 19. Provides for settlement and compromise of tax claims by the board of tax commissioners with the approval of the Attorney-General.

§ 20. Provides for suspending the whole or proportionate part of tax where claims against the estate are in litigation.

§ 21. Gives power of sale for payment of the tax in the same way as to pay debts.

§ 22. Requires the executor or administrator within thirty days to file an inventory on oath of the fair cash value of the estate and within one year thereafter a further sworn statement showing gain or loss in value during settlement and the amounts paid for funeral expenses, administration and the support of a widow and the family of decedent as fixed by the probate court. Trustees under taxable trusts created by decedent must file similar statements. Upon application the board of tax commissioners may extend the time for filing such statements.

§ 23. Requires probate clerks to notify the board of tax commissioners of the granting of letters and fixes the fees of such clerks.

§ 24. Provides that if the board of tax commissioners is dissatisfied with the inventory they may summon the executor or administrator to furnish further information. They then appraise the estate or appoint an appraiser before whom the usual proceedings are held.

§ 25. Imposes a penalty for failure to furnish information as to estates by persons required to do so by the act.

§ 26. Provides for appeal.

§ 27. No banking association organized under the laws of the United States and located within this State, no corporation incorporated within this State, and no unincorporated association, joint stock company or business trust having certificates representing shares of stock and carrying on business in this State shall record a transfer of its stock made by any executor, administrator or trustee, or issue a new certificate for any such share of its stock at the instance of any executor, administrator or trustee, or transfer any registered bond or other registered evidence of indebtedness at the instance of any executor, administrator or trustee until a permit authorizing such transfer has been issued by the board of tax commissioners and filed with the said corporation, association, company or trust making such a transfer before a permit authorizing such transfer as aforesaid has been issued shall be liable for any tax which may be assessed on account of the bequest or gift of such stock, bond or other evidence of indebtedness, together with the interest thereon to be collected in an action to be brought by the General Treasurer. The board of tax commissioners shall not issue such a permit until all taxes imposed on account of such bequest or gift has been paid or the payment thereof secured by bond or deposit as herein before provided.

§ 28. The amount due upon the claim of any creditor against the estate of a decedent arising under a contract made after the passage of this act, if payable by the terms of such contract at or after the death of the deceased shall be subject to the same tax imposed by section 5 of this act upon a legacy of like amount. The value of net estates of decedents or the value of legacies or distribution shares in the estate of decedents, for the purposes of taxation under the provisions of section 1 and section 5 of this act, shall not be diminished by reason of any claim against the estate based upon such a contract except in so far as it may be shown affirmatively by competent evidence that such a claim was legally due and payable in the lifetime of decedent.

§ 29. Provides that no final accounting shall be allowed unless the tax is shown to have been paid or a bond filed as provided.

§ 30. Except as otherwise provided the value of all estates is to be appraised as of the date of death.

§ 31. If no will or administration has been applied for within three months the tax commission may move to fix the tax or apply for administration.

§ 32. Defines the word "person" to include corporations, associations, joint stock companies and business trusts.

§ 33. Sections 20 to 32 inclusive of this act shall apply to the taxes imposed under the provisions of section 1 and section 5 of this act.

§ 34. This act shall take effect upon its passage and may be cited as "The Inheritance Tax Act of 1916."

**Prior Statutes:** None.

## **SOUTH CAROLINA.**

**Imposes no inheritance tax.**



# **SOUTH DAKOTA.** Taxes all property of nonresidents within the State, including stock in domestic corporations.

TABLE OF RATES AND EXEMPTIONS

Classification of Persons	Exemptions (To be Deducted)	Classification of Property by Amounts			
		First Class Excess after de- ducting exemp- tions from \$15,- 000.	Second Class \$15,000 to \$50,000	Third Class \$50,000 to \$100,000	Fourth Class Excess over \$100,000
As designated by law.	Amount	Primary Rates	Two Times Primary Rates	Three Times Primary Rates	Four Times Primary Rates
1 Wife or lineal issue.	\$10,000	1%	2%	3%	4%
2 Husband, lineal ancestors, adopted or mutually acknowledged child.	Husband or adopted child, \$10,000 Lineal ancestors \$3,000	2%	4%	6%	8%
3 Brothers, sisters and descendants either; wife or widow of a son or husband of a daughter.	\$500	3%	6%	9%	12%
4 Brother or sister of father or mother or descendant of brother or sister of father or mother of decendent.	\$200	4%	8%	12%	16%
5 Persons in other degrees of col- lateral consanguinity, strangers in blood and bodies politic or corporate.	\$100 (Certain charitable educational insti- tutions, \$2,500)	5%	10%	15%	20%

(\*) All property transferred to public corporations within the State for strictly county, town or municipal purposes, is exempt.

## THE STATUTE.

## REVISED CODE OF SOUTH DAKOTA, 1919, SECTIONS 6827 TO 6871.

§ 6827. *Taxable Transfers.* A tax shall be imposed upon any transfer of property, real, personal or mixed, or any interest therein or income therefrom, in trust or otherwise, to any person, association or corporation except a county, township or municipal corporation, within the State, for strictly county, township or municipal purposes, in the following cases:

1. When the transfer is by will or by intestate laws of this State from any person dying possessed of the property while a resident of the State.

2. When a transfer is by will or intestate law, of property within the State or within its jurisdiction and the decedent was a nonresident of the State at the time of his death.

3. When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within this State, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

Such tax shall be imposed when any such person or corporation becomes beneficially entitled in possession or expectancy to any property or the income thereof, by any such transfer, whether made before or after the taking effect of this code. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the taking effect of this code, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised to such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this chapter shall be deemed to take place to the extent of such omission or failure in the same manner as though the person or corporation thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

§ 6828. *Lien Created and Discharged.* Such tax shall be and remain a lien upon the property passed or transferred until paid, except where the transfer is by deed or grant in the hands of a *bona fide* purchaser or incumbrancer without notice. In such case a certified copy of the application for probate of the will or estate of the decedent, or a certified copy of the application for a determination of the inheritance taxes, may be recorded in the office of the register of deeds of the county where any real property described therein is situated, which record shall thereafter be deemed to be notice of such taxes to subsequent purchasers and incumbrancers of such real property, which record may be discharged by recording the certificate of the county treasurer to that effect, or by recording a certified copy of the order of the County Court to that effect. The person to whom the property passes or is transferred and all administrators, executors and the trustees of every estate shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed.

§ 6829. *Tax Computed upon Full Value in Excess of Exemptions.* The tax so imposed shall be computed upon the true and full market value in money of such property less any indebtedness, except expenses of administration, chargeable against such property, and at the rate hereinafter prescribed and only upon the amount in excess of the exemptions hereinafter granted; provided, that in determining the true and full market value in money of such property no deductions shall be made by reason of any part of the property being claimed, used or occupied as the homestead as created and defined by any law of this State. Provided, further, that in determining the true and full market value in money of such property no deductions shall be made for any inheritance tax or estate tax paid to the government of the United States.

§ 6830. *Primary Rates on Fifteen Thousand Dollars or Less.* When the property or any beneficial interest therein passes by any such transfer, where the amount of the property shall exceed in value the exemptions hereinafter specified, and shall not exceed in value fifteen thousand dollars, the tax hereby imposed shall be:

1. Where the person entitled to any beneficial interest in such property shall be the wife or lineal issue, at the rate of 1% of the clear value of such interest in such property.

2. Where the person or persons entitled to any beneficial interest in such property shall be the husband, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this State or any child to whom such decedent for not less than ten years prior to such transfer stood in mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of 2% of the clear value of such interest in such property.

3. Where the person or persons entitled to any beneficial interest in such property shall be a brother or sister or a descendant of a brother or sister of the decedent, a wife or a widow of a son or the husband of a daughter of the decedent, at the rate of 3% of the clear value of such interest in such property.

4. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of 4% of the clear value of such interest in such property.

5. Where any person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of 5% of the clear value of such interest in such property.

§ 6831. *Primary Rates on Amounts Above Fifteen Thousand Dollars.* The rates in the preceding section are for convenience termed primary rates. When the amount of the clear value of such property or interest exceeds fifteen thousand dollars, the rate of tax upon the excess shall be as follows:

1. Upon all excess of fifteen thousand dollars and up to fifty thousand dollars, two times the primary rate.

2. Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two times the primary rate.

3. Upon all in excess of one hundred thousand dollars, four times the primary rate.

§ 6832. *Exemptions Allowed.* The following exemptions from the tax are hereby allowed:

1. All property transferred to public corporations within the State for strictly county, township or municipal purposes shall be exempt.

2. Property of the clear value of ten thousand dollars transferred to the widow of the decedent or husband of the decedent, each of the lineal issue of the decedent, or any child adopted as such in conformity with the laws of this State, or any child to whom the decedent for not less than ten years prior to such transfer stood in mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, shall be exempt.

3. Property of the clear value of three thousand dollars transferred to each of the lineal ancestors of the decedent shall be exempt.

4. Property of the clear value of five hundred dollars transferred to each of the persons described in the third subdivision of the second preceding section shall be exempt.

5. Property of the clear value of two hundred dollars transferred to each of the persons described in the fourth subdivision of the second preceding section shall be exempt.

6. Property of the clear value of one hundred dollars transferred to each of the persons and corporations described in the fifth subdivision of the second preceding section shall be exempt; provided, however, that property of the clear value of two thousand five hundred dollars transferred to a public hospital, academy, college, university, seminary of learning, church or purely charitable institution within this State, shall be exempt. Provided, that if any of the persons above named to whom are granted such exemptions shall receive from the decedent by the same transfer property outside the jurisdiction of this State, the value of such outside property at the date of decedent's death shall be deducted from the amount of exemptions hereinbefore contemplated, and the remainder shall be the amount of exemptions allowed, and if the value equals or exceeds the exemptions then no exemptions shall be allowed. No other exemptions shall be allowed to the persons above named by reason of any other statute of this State.

§ 6833. Prescribes the jurisdiction of the County Court and regulates procedure.

§ 6834. Makes the tax payable as soon as determined, except on contingent interests, when it does not accrue until beneficiary gets the property.

§ 6835. Prescribes the powers and duties of the tax commission.

§ 6836. *Report of Personal Representative—Inventory—Service.* Within thirty days after the appointment and qualification of an executor or administrator he shall make and return under oath to the clerk of the court issuing to him his letters, a full and detailed report upon forms of blanks prescribed by the tax commission as follows:

1. Name and last residence of decedent.
2. Date of death.
3. Whether or not he left a will.
4. Name and postoffice address of executor, administrator, or trustee.
5. Name and postoffice address of surviving husband or wife, if any, and the age of such surviving husband or wife, at the date of decedent's death.
6. If testate, name and postoffice address of each beneficiary in the will.
7. Relationship of each beneficiary to the testator.
8. If intestate, name and postoffice of each heir at law.
9. Relationship of each heir at law to the decedent.
10. Inventory of all property of the decedent, located within or without the State, including any property transferred in contemplation of death or which he may have reason to believe was so transferred, together with the value of each item of property, except property outside the State and as to that property the gross value of the whole of such property.

11. Whether or not the property passed in possession and enjoyment in fee, for life or for a term of years, with a copy of any will, deed or instrument of transfer and such other information as the tax commission may require.

With such report he shall file proof of service of a copy thereof on the county treasurer of the county in which his letters were issued. A copy shall also forthwith be mailed by such executor or administrator, or the attorney representing him, to the tax commission and the receipt of the tax commission therefor shall be filed with the clerk. Upon failure of the executor or administrator to return such report and proof of service and receipt of the tax commission, the clerk shall forthwith report his delinquency to the court for such orders as may be necessary to enforce the observance of this section; the receipt of the tax commission for the copy of the report may not be filed until such report is made complete as required by this section. No decision of the court determining whether there be a tax or no tax shall be made by the court until the formal receipt of the tax commission is filed with the clerk.

Whenever by reason of the complicated nature of the estate, or by reason of the confused condition of the decedent's affairs it is impracticable for the executor or administrator to file with the clerk of courts a full, complete and itemized inventory of the property in the estate within the time required, the court may on application extend the time for filing the same and the clerk shall notify the tax commission of such extended time. Upon request of the

tax commission the executor or administrator shall furnish the commission with such further information as it may require.

§ 6837. Provides for proceedings to collect the tax in case no report is filed as prescribed in the last section.

§ 6838. Provides for appraisal by the County Court.

§ 6839. Regulates procedure upon the appraisal.

§ 6840. Provides for procedure on appeal.

§§ 6841 to 6845. Provide for the taxation of life estates, remainders and contingent interests similarly to the New York statute.

§ 6846. *Increase of Estate Subject to Tax.* Whenever any property has been transferred since the twelfth day of March, 1915, or shall hereafter be transferred subject to any charge, estate or interest determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest shall be deemed a transfer of property taxable under the provisions of this chapter, in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

§ 6847. *When Actual Value Cannot Be Determined.* The tax upon any devise, bequest, gift or transfer limited, conditioned, dependent or determinable upon the happening of any contingency or further event, by reason of which the full, true and actual value thereof cannot be ascertained, as provided for by the provisions of this chapter, at or before the time when the taxes become due and payable as herein provided, shall accrue and become payable when the person or corporation beneficially entitled thereto shall come into the actual possession or enjoyment thereof.

§ 6848. *Expectancies Appraised.* Estates in expectancy which are contingent or defeasible and in which the proceedings for the determination of the amount of the tax have not been taken, or where the taxation thereof has been held in abeyance, shall be fixed at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation made of the particular estates for the purposes of taxation, upon which such estates in expectancy may have been limited.

§ 6849. Imposes costs and provides for their payment out of the estate. Stenographers' fees, when minutes are demanded, may be made part of such costs.

§ 6850. Provides for reappraisal on the ground of fraud or mistake.

§ 6851. *By Whom Payable, Deduction, Collection, Sale.* Such inheritance tax may be enforced in the County Court in the same manner provided for the enforcement of a claim against the estate of a decedent, except that no claim need be presented by the State therefor, and the tax shall be collected from the portion of the estate to which any person is entitled as an inheritance, devise, bequest, legacy, grant or gift. Any administrator, executor or trustee having in charge or in trust any property for distribution embraced in or belonging to any inheritance, devise, bequest, legacy or gift, subject to the tax thereon as imposed by this chapter, shall deduct the tax therefrom, and within thirty days thereafter shall pay the same over to the county treasurer as herein provided. He shall not deliver or be compelled to deliver any property embraced in any inheritance, devise, bequest, legacy or gift, subject to taxation under this chapter, to any person until he shall have collected the tax thereon. The property of the estate, or any part thereof chargeable with the payment of any such tax, may be sold in satisfaction thereof as provided for the sale of the assets of an estate to pay the debts of the decedent.

§ 6852. *Collection by Action.* In addition to any other remedy for the collection of inheritance taxes, the State may enforce its claim therefor and the lien thereof by an action at law or a suit in equity, in any court of competent jurisdiction within the proper county, against any person liable to pay the same and against any property subject to the lien thereof.

§ 6853. Provides for receipts and distribution of tax proceeds.

§ 6854. *Interest Rates After One Year.* If such tax shall not be paid within one year from the date of the death of the decedent, interest shall be collected thereon at the rate of 7% from the date of the death of the decedent, unless, by reason of claims against the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined, as herein provided; in such case interest at the rate of 6% per annum shall be charged upon such tax from the date of the death of the decedent until the cause of delay is removed, after which 7% shall be charged. If the tax shall be paid in full prior to the expiration of one year from the date of the death of the decedent no interest shall be charged.

§ 6855. Provides for refunds in case of error.

§ 6856. *Transfer of Capital Stock.* No corporation organized under the laws of this State shall transfer on its books any shares of its capital stock standing in the name of a nonresident decedent or in trust for a nonresident decedent, without the consent of the tax commission first procured as herein provided for. Any corporation violating any of the provisions of this section shall be liable to the State for the amount of tax due to the State on a transfer of any such shares of stock, and in addition thereto a penalty equal to 10% of the amount of such tax; to be recovered in a civil action in the name of and for the benefit of the State.

§ 6857. *Transfer of Nonresident's Property, Tax Determined, Receipt, Certificate.* No foreign administrator or executor shall assign or transfer any stock or obligation in this State or within its jurisdiction, standing in the name of a nonresident decedent or in trust for a nonresident decedent, without the consent of the tax commission first procured as herein provided for, and no such assignment or transfer shall be valid until this provision is complied with. In order to determine whether an inheritance tax is due to the State under the provisions of this and the preceding section, the personal representative of such estate shall make application to the tax commission for the purpose of having the tax determined, whereupon it shall be the duty of the tax commission to immediately furnish such personal representative with all necessary blanks for such purpose. Such blanks shall be properly filled out and duly verified and transmitted to the tax commission, and upon receipt thereof the tax commission shall immediately proceed to determine the inheritance tax and advise the representative thereof of the amount of such tax. The tax so determined shall be paid directly to the State Treasurer and he shall issue and transmit to such personal representative his receipt therefor, and if no tax shall be found due the tax commission shall issue its certificate to that effect, and promptly transmit the same to the representative of such estate by ordinary or usual course of United States mail.

§ 6858. *Nonresident Estate, Report, Tax, Payment, Certificate.* Every foreign administrator or executor of the estate of a nonresident decedent having property within this State, or within its jurisdiction, in which no ancillary probate proceedings are instituted in the County Courts of this State for the purpose of probating such estate, shall within ninety days after the issuing of letters testamentary or letters of administration, as the case may be in the foreign State, make application to the tax commission of this State for the determination of whether there is an inheritance tax due to this State on account of the transfer of the nonresident decedent's property, and such applicant shall furnish to the tax commission therewith an affidavit setting forth a description of the property owned by such decedent at the time of his death, and being within this State or within its jurisdiction, and the value thereof as of the date of the nonresident decedent's death. If such property consists in whole or in part of mortgages secured upon real or personal property situated within this State, such list shall enumerate each mortgage separately, stating the name and postoffice address of the mortgagor, the county in which the mortgaged property is situated, the date of the execution of the mortgage, the amount for which such mortgage is given, the rate of interest and the amount due on such mortgage at the date of death of the decedent, and in addition, if such mortgage is on real property, the legal description of the same shall be given, the county in which the mortgage is recorded, the date

when recorded and the book and page where recorded within such county. If such property consists in whole or in part of a debt or debts evidenced in any other manner than by mortgages secured on real or personal property, such list shall contain the name of the debtor, the amount of the debt as of the date of the death of the decedent, and the nature of the debt; also when required by the tax commission a description and statement of the aggregate true value of all the property owned by the nonresident decedent at the time of his death having its situs outside of this State; a copy of the last will of the decedent, in case he died testate, the name, relationship and postoffice address of each beneficiary of the testator; if intestate, the name, postoffice address and relationship of each heir at law, and such other information as the tax commission may require to enable it to determine the inheritance tax. Such application and statements shall be subscribed and sworn to by the personal representative of such nonresident decedent, or some other person having knowledge of the facts therein set forth. The statements in such affidavits as to value or otherwise shall not be binding upon the tax commission in case it believes the same to be incorrect in any respect. From the information so furnished and such other information as it may acquire with reference thereto, the tax commission shall with reasonable expedition, determine the amount of tax, if any, due to the State under the provisions of the inheritance tax law and notify the person making application of the amount thereof claimed to be due. On payment of the tax so determined to be due to the State Treasurer he shall issue to the administrator or executor paying the amount his receipt therefor, and immediately furnish a duplicate thereof to the tax commission. In case no tax is due the tax commission shall issue its certificate to that effect and send the same to the executor or administrator by the usual and ordinary course of United States mail.

§ 6859. Prescribes duties for register of deeds.

§ 6860. Provides for proceedings on appeal and judgments.

§ 6861. Provides for trial, change of venue, depositions, etc.

§ 6862. *Deposit Companies, Notice to County Treasurer, Inventory, Liability.* No safety deposit company, bank or other institution, or person holding assets or securities of a decedent, shall deliver or transfer the same to the executor, administrator or legal representative of such decedent, or upon his order or request or to any other person, unless notice of the time and place of such transfer shall be given to the county treasurer at least ten days prior thereto, to examine such securities or assets prior to the time of such delivery or transfer, and such examination by the county treasurer shall be at the office of such county treasurer, in the presence of the executor named in the will or any legal representative of or any person interested in the estate of decedent. The county treasurer shall make a complete and itemized list thereof and immediately forward the same to the tax commission. If upon such examination the county treasurer shall for any cause deem it advisable that such securities or assets should not be immediately transferred or delivered he may forthwith notify in writing such bank, company, institution or person to defer delivery or transfer thereof for a period not exceeding ten days from the date of such notice, and thereupon it shall be the duty of such company, bank, institution or person to withhold the delivery or transfer to the time stated in such notice or until the revocation thereof. Failure to serve the notice first above mentioned or defer the delivery or transfer of such securities or assets for the time stated in the second notice above mentioned shall render such company, bank, institution or person liable to the payment of the inheritance tax due upon such securities or assets pursuant to the provisions of this chapter.

§ 6863. *Stipulation as to Value Govern, if Approved.* The tax commission shall have power to stipulate as to the value of any property where the estate is being probated, and any such stipulation when approved by the court shall be of the same force and effect as a decree to the same effect made by the court.

§ 6864. *Agreement as to Tax with Tax Commission Valid.* The tax commission, in case of the estate of a nonresident decedent whose estate has not

been probated in this State, shall have power to agree upon the amount of the tax due upon any transfer, and the person paying such tax may present such agreement to the State Treasurer and, upon payment of the amount fixed in such agreement, shall be discharged from further liability under the provisions of this chapter. In such case the State shall retain the whole of such tax.

§ 6865. *Agreement to Compound Tax Valid if Approved by County Court.* The tax commission is authorized, in case of the estate of a nonresident decedent whose estate has not been probated in this State, and with the consent and approval of the County Court in the case of an estate probated in this State, expressed in writing, to enter into an agreement with the trustees of any estate in which remainders or expectant estates are of such a nature or the circumstances such that the taxes are not presently payable or where the interests of the legatees or devisees are or were not ascertainable, under the provisions of this chapter, at the time fixed for the determination thereof, as hereinbefore provided, and to compound the tax upon any transfers upon such terms as are deemed equitable and expedient; to grant a discharge to such trustees on account thereof upon the payment of the taxes provided for in such composition agreement; provided, further, however, that no such agreement shall be conclusive in favor of any trustee as against the interests of any cestui que trust who may possess either present rights of enjoyment or fixed, absolute and indefeasible rights of future enjoyment or of such as would possess such rights in the event of the immediate termination of any particular estate, unless he consents thereto either personally or by duly authorized attorney, when competent, or by guardian when incompetent.

§ 6866. *Composition Agreements Executed in Triplicate.* Composition agreements under the provisions of this chapter shall be executed either in duplicate or triplicate as the case may require, one of which shall be filed in the probate court in the county in which the tax is to be paid, if the estate is being probated in this State, one with the tax commission, and one shall be delivered to the person paying the tax thereunder.

§ 6867. *Tax Paid or Bond for Payment Required Before Transfer.* The tax commission shall not consent to the assignment or delivery of any property embraced in any legacy, devise or transfer from a nonresident decedent to a nonresident trustee, where the property embraced in such legacy, devise or transfer is so situated and disposed of as to be presently ascertained, until the tax thereon shall have been paid as hereinbefore provided; nor shall the tax commission consent to the assignment or delivery of any property embraced in any such legacy, devise or transfer, where the property embraced therein is so situated and disposed of as to authorize it to enter into a composition agreement with reference thereto, until the tax thereon shall have been compromised and the tax paid as hereinbefore provided, or the trustee, or other person to whom the possession of such property is delivered, shall have executed and delivered to the tax commission a bond to the State, in an amount equal to the amount of tax which in any contingency may become due and owing to the State on account of the transfer of such property; such bond to be approved by the tax commission and conditioned for the payment to the State of any tax which may accrue to the State under this chapter, on the subsequent transfer or delivery of the property to any person beneficially entitled thereto.

§ 6868. *Distribution Contingent on Payment or Bond.* No property having its situs in this State embraced in any legacy or devise bequeathed or devised to a nonresident trustee, and situated or disposed of as described in the preceding section, shall be decreed or distributed by any court of this State to such nonresident trustee until he shall have compromised and paid the tax as provided for in that section, or in lieu thereof given a bond to the State as provided for therein.

§ 6869. Gives definitions of terms used in the act.

§ 6870. *When Conveyance Presumed to Be in Contemplation of Death.* In any action or proceeding by or on behalf of the State, or under the authority thereof, to enforce an inheritance tax against property claimed to have been transferred in contemplation of death, in all cases where the instrument of conveyance shall have been delivered, or delivered out of escrow, or recorded,



upon or after the death of the decedent it shall be presumed that such transfer was made in contemplation of death within the meaning of this chapter, and the burden of proof to show otherwise shall be upon the person claiming under such transfer.

§ 6871. *Proceedings Applicable to Past and Future Transfers.* The proceedings herein provided for the appraisement of estates for inheritance tax purposes, and the determination of such tax and the collection thereof, shall apply to and govern all proceedings for the determination and collection of inheritance taxes commenced after the taking effect of this code, whether the same accrued prior or subsequent thereto; the intention of this statute being to furnish a remedy for the determination and collection of taxes already accrued as well as to provide for such taxes, and the determination and collection thereof in the future.

## TENNESSEE.

### ACT OF 1919, EFFECTIVE FEB. 21, 1919.

Repeals chap. 174, L. 1893, as amended by chap. 479, L. 1907; chap. 101, L. 1915, as amended by chap. 70, L. 1917.

Does not tax shares of stock in domestic corporations where such shares are taxed by State of domicile of nonresident decedent.

TABLE OF RATES AND EXEMPTIONS

Class or Relationship	Ex-emption	Above exemption to \$25,000	Next \$25,000	Next \$50,000	Next \$400,000	All over \$500,000	
Husband, wife, direct descendants or ascendants' adopted child.	\$10,000	1%	1½%	2%	3%	5%	
		Above exemption to \$50,000	Next \$50,000	Next \$50,000	Next \$50,000	Next \$50,000	On all over \$250,000
All others, except municipal, charitable, educational or religious purposes, which are wholly exempt.	\$1,000	5%	6%	7%	8%	9%	10%

## THE STATUTE.

Section 1. *Be it enacted by the General Assembly of the State of Tennessee,* That a tax shall be and is hereby imposed and established for the general uses and purposes of the State, upon every transfer of property, real, personal or mixed, or any interest therein or income therefrom, in trust or otherwise, to persons or corporation, subject to the exceptions and limitations hereinafter prescribed, in the following cases, to wit:

(1) When the transfer is by will or by the intestate or other laws of this State, from any person dying possessed of property while a resident of the State.

(2) When the transfer is by will or by intestate, or other laws of property within the State, or within its jurisdiction, and the decedent was a nonresident of the State at the time of his death, except the following property, to wit:

(a) Money on hand or on deposit; (b) shares of stock, bonds or notes held as collateral to secure any *bona fide* indebtedness owed by such nonresident to

any person, firm or corporation in this State; (c) shares of stock, bonds, notes, or other evidences of debt, where the imposition of an inheritance tax thereon in this State would result in the payment of a second, or double inheritance tax upon such property by reason of the fact that it is subject to the payment of such a tax in the State where the nonresident decedent lived at the time of his death.

(3) When the proceeds of any life insurance policy or contract, upon the death of an insured who was a citizen of this State at the time of his death, by the terms thereof, or by any statute, pass to the wife, husband, heirs, administrator, executor, or trustee of the insured, or to any specific beneficiary or beneficiaries, in the nature of a distribution, gift, bequest or devise, or without a fair consideration in money or money's worth.

(4) When the transfer of property is by deed, grant, bargain, sale, gift, or by life insurance policy, or contract, and is made by a resident of this State; or when the same is made by a nonresident of this State and the property transferred is situated within this State, or is within the State's jurisdiction; and in either case when the transfer is made in the nature of a final disposition or distribution of such property in contemplation of death of the transferor to take effect in possession or enjoyment at or after the date of such death, and every such transfer made within two (2) years next preceding the date of such death without consideration equal in money or money's worth to the full value of the property transferred, shall be construed to have been made in contemplation of death within the meaning of this act; and the words "contemplation of death" shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his last will and testament, it being the intention to include within the provisions of this act all transfers made in lieu of or for the purpose of avoiding transfers by last will and testament, or by the intestate laws.

(5) Whenever, except in cases of partnerships formed to operate any kind of a business undertaking property, real or personal, is held in the joint names of two or more persons, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to the survivor, or survivors, of such person upon the death of one or more of them, and upon such death the survivor or survivors is, or are, entitled to the immediate ownership or possession and enjoyment of such property, the vesting of title or ownership or possession and enjoyment of such property in such survivor or survivors at such death or deaths shall be deemed a transfer taxable under the provisions of this act. The amount on which such taxes shall be collected is the full value of the property so transferred, less such part thereof as may be proved by the survivor or survivors to have originally belonged to him or them, and never to have belonged to the decedent; provided, that real estate held by the entirety by husband and wife shall not be subject to taxation under the provisions of this act if such real estate vests in the survivor on the death of either.

(6) Whenever any person, trustee, or corporation has the power of making disposition of property under an appointment by will, deed, or other instrument heretofore executed; or is vested with such power by such will, deed or other instrument hereafter executed, a transfer of such property shall be deemed to take place for the purposes of taxation under the provisions of this act at the time such power of appointment, under the provisions of the will, deed or other instrument is to be exercised, whether the power is then exercised or not.

(7) Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequest, devise, or residuary legacy exceeds what would be a reasonable compensation for their services, such excess shall be liable to said tax.

(8) Where any property shall, after the passage of this act, be transferred subject to any charge, estate, or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase

accruing to any person or corporation upon the extinction or determination of such change, estate, or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

§ 2. *Be it further enacted*, That there is excepted from the tax imposed in the foregoing section and from the operation of this act the following and no other:

(1) Property of an intestate, testator, or grantor, where the whole estate has a clear market value of less than \$1,000.00.

(2) Property having a clear market value of less than \$10,000.00, transferred to the wife and to the direct descendants and ascendants, or either of them, of the person from whom the transfer is made; provided, however, that in determining whether any property falls within either of the foregoing exceptions, the estate the transfer of which may be the subject of taxation under this act, shall be treated as a whole or as one transfer or sum, without reference to the number of transfers or parts of shares into which such estate may be subdivided.

(3) All property transferred to municipal corporations, for strictly municipal purposes.

(4) All property devised or transferred to any church for purely religious purposes, to any school or college for purely educational purposes, to any hospital or *bona fide* charitable institution.

§ 3. Prescribes the rates and exemptions of the foregoing table.

§ 4. Provides that the tax shall be levied on the clear market value after deducting debts and expenses of administration, and that life estates shall be computed by the Carlisle tables.

§ 5. Authorizes the County Court clerks or any interested party, including the Comptroller of the Treasury, to institute proceedings, and regulates procedure.

§ 6. Authorizes the State authorities to co-operate with the Federal authorities in the collection of the Federal tax.

§ 7. Makes the tax a lien for five years and the executor, administrator, trustee or beneficiary personally liable.

§ 8. Allows 5% discount if tax is paid within six months after death. If not paid within twelve months interest is charged from date of accrual of tax.

§ 9. Prescribes the duties of the court clerk in turning over tax money to the treasury.

§ 10. Provides for books to be kept by the court clerk.

§ 11. Gives power of sale to executors and administrators and forbids them from turning over any property until the tax is paid. Requires them to deduct the amount of the tax from money legacies.

§ 12. Requires executors and administrators to notify court clerk in writing ten days before taking possession of property in the hands of safe deposit companies, banks or similar institutions. Requires them within thirty days of appointment to file complete inventory with the State Comptroller, but such information shall only be available for the collection of the tax.

§ 13. *Be it further enacted*, That every life insurance company or association doing business in this State, shall, within ten days after the approval of proof of death of a person insured under a policy or policies, in such companies or associations, give notice in writing to the County Court clerk of the county where the estate is being administered, stating: (a) The date and amount of each policy; (b) the name and address of each beneficiary therein; (c) the time and manner of payment.

Any insurance company doing business in the State of Tennessee failing or refusing to comply with the provisions of this act, shall thereby forfeit their charter within this State and their right to do business within the State of Tennessee.

Upon certification from the Insurance Commissioner that any insurance company has failed or refused to comply with the provisions of this act, the

Secretary of State shall forthwith cancel the charter of such company and shall immediately notify such insurance company that it is barred from doing further business in the State of Tennessee.

§ 14. *Be it further enacted*, That the Comptroller of the Treasury shall be vested with absolute and exclusive jurisdiction over the collection of all taxes provided for in this act after the expiration of one year from the date of the death of the person from whom the tax is derived, but that the tax itself shall be paid to the County Court clerk, except as hereinafter provided.

Said Comptroller of the Treasury is vested with full and complete authority to sue in the name of the State, or to intervene in any case pending, wherein the estates of decedents are being administered, for the collection of such taxes after the expiration of twelve months, whether the payment of said tax be delinquent or whether its collection has been postponed by reason of litigation, or other cause of delay, or whether for any reason no appraisal has theretofore been made; provided, independent suits for the collection of the tax shall be brought by the Comptroller in the Chancery or Circuit Courts of the State, in the county in which the tax accrues, and that the Comptroller may employ some competent attorney to represent the State, or direct the revenue agent to do so, and if the court adjudges any tax to be due, it shall also fix a reasonable fee for the attorney or revenue agent representing the Comptroller, which shall be taxed up as a part of the costs of the cause, to be collected from the taxpayer or out of the property held liable for the tax.

All suits or intervening proceedings brought by the Comptroller as above provided, may be, at the option of the Comptroller, based upon the appraisement, if such has been made in accordance with the previous provisions of this act, or he may apply to the court in which the suit is brought, to fix and determine the amount of the tax, where no appraisement has been made, or without reference to any appraisement that may have been made, the taxpayer forfeiting any benefits of the appraisement for his failure to make payment before the tax becomes delinquent.

Whenever an estate charged or sought to be charged with an inheritance tax in this act provided for is of such a nature or is so disposed that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of the law, the Comptroller of the State may compromise with the beneficiaries or representatives of such estate and compound the tax thereon, such settlement and compromise to be filed in the office of the County Court clerk of the particular county to whom the tax, as thus compounded, shall be paid.

§ 15. Requires the furnishing of blanks, and the other sections deal with the repeal of former statutes.

## TEXAS.

Taxes only collaterals and strangers.

Taxes all property of nonresidents within the State when passing to collaterals and strangers, including stock in domestic corporations.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount exempt	Rates of tax					
		Above exemption up to \$10,000	\$10,000 to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Father, mother, husband, wife, direct lineal descendants.	All	No tax.					
Public corporations, charitable, educational or religious purposes within the State.	All	No tax.					
Lineal ascendant, brother, sister or their lineal descendants.	\$2,000	2%	2½%	3%	3½%	4%	5%
Uncle, aunt or their lineal descendants.	\$1,000	3%	4%	5%	6%	7%	8%
All others.....	\$500	4%	5½%	7%	8½%	10%	12%

## LAWS OF 1907, CHAPTER 21, AS AMENDED BY CHAPTER 166, LAWS OF 1917.

Section 1. All property within the jurisdiction of this State, real or personal, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of this State or not, which shall pass, absolutely or in trust, by will, or by the laws of descent of this or any other State, or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person except the father, mother, husband, wife or direct lineal descendants of the testator, intestate, grantor or donor, or any public corporation or charitable, educational or religious organization within this State when such bequest, gift or devise is to be used for charitable, educational or religious purposes within this State, be subject to a tax for the benefit of the State, as follows:

The section then prescribes the rates and exemptions as shown in the foregoing table.

§ 2. Provides for the valuation of life estates and remainders upon actuaries' combined experience tables on the basis of 4%.

§ 3. Taxes bequests to executors in lieu of commissions in excess of a reasonable compensation.

§ 4. Requires the executor or administrator to file an inventory within three months of his appointment under penalty of \$1,000.

§ 5. If no probate proceedings have been brought on a taxable estate within three months after death the County Court must appoint an administrator.

§ 6. Provides for the appointment of appraisers or that the county judge may make the appraisal himself.

§ 7. Requires the county judge to assess the tax upon the appraisal, makes

the tax a lien with interest from the date of death unless paid within six months, when no interest is charged.

§ 8. Requires the executor or administrator to deduct the tax if bequest or share is in money; if in property to collect it from the beneficiary; gives him power of sale, and forbids delivery to beneficiary until tax is paid.

§ 9. Where a legacy is charged on real estate the heir is required to deduct the tax, which remains a lien and may be enforced in the same manner as the legacy.

§ 10. Provides for tax receipts.

§ 11. Provides for actions to recover delinquent taxes.

§ 12. Requires payment of taxes by county collectors to the State Treasurer.

§ 13. Provides for deposit of the tax moneys in the general revenue fund.

§ 14. Provides for a proportionate refund where debts have been proved against the estate after distribution.

§ 15. Requires that final accounting shall show payment of the tax.

§ 16. Provides that administration may be dispensed with where an inventory is filed and tax proceedings had.

Chapter 166, Laws of 1917, reads as follows:

The Comptroller of Public Accounts of the State of Texas is hereby authorized and empowered, and it is made his duty to appoint and contract with some suitable person or persons whose duty it shall be to look specially after, sue for and collect the taxes provided by this chapter; such person in no event to receive under such contract more than ten (10) per cent of the amount of such taxes collected hereunder, as compensation. It shall be the duty of such person, so contracted with, to make written report to the county judge of each county in which he may be appointed and employed to assist in the enforcement of this law, of each estate upon which such tax may be due, or may become due, *as soon as possible after the death* of any person owning such estate. Such report shall state probable value of such estate, its character and location, if known, and the names of the persons known to be interested therein.

The amount of compensation due such person shall be paid by the collector of taxes out of the taxes collected on property belonging to such estate, and such payment shall be deducted from said taxes by said collector and reported to the Comptroller.

It shall be the further duty of such person to aid in every possible way in the collection of such taxes.

It shall be the duty of the county judge of said county upon his own motion or petition of such appointee of said Comptroller, to appoint an administrator of every estate subject to taxation under the provisions of this chapter where no application for letters testamentary or of administration thereon is made within three (3) months after the death of the person owning such estate taxable hereunder. The person appointed by the said Comptroller may represent the State in any proceeding necessary under the provisions of this chapter to enforce the collection of such taxes but without other compensation than as provided in his original employment.

## UTAH.

Taxes all property of nonresidents within the State.

TABLE OF RATES AND EXCEPTIONS

CLASS OR RELATIONSHIP	Amount exempt	On entire net estate above \$10,000 up to \$25,000	On entire net estate in excess of \$25,000
The court apportions the tax among all beneficiaries without exception.	On entire estate; one exemption of \$10,000.	3%	5%

**TITLE 36, COMPILED LAWS OF UTAH, OF 1907, AS AMENDED BY CHAPTERS 28 AND 29, LAWS OF 1915, AND LAWS OF 1917**

**Note:** 1917 and 1919 amendments did not change rates or exemptions.

§ 1220-x. Property Subject to Tax. Computation. Lien. Deductions.—All property within the jurisdiction of this State, and any interest therein, whether belonging to the inhabitants of this State or not, and whether tangible or intangible, which shall pass by will or by statutes of inheritance of this or any other State, or by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after the death of the grantor, vendor, or donor, to any person in trust or otherwise, shall be subject to the following tax, after the payment of all debts, for the use of the State: Three per cent of its market value in excess of \$10,000.00, and not exceeding \$25,000.00, and 5% of its market value in excess of \$25,000.00; and all administrators, executors, and trustees, and any such grantee under conveyance, and such donee under a gift made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them respectively, except as herein otherwise provided, with lawful interest as hereinafter set forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid. In determining the amount of tax to be paid under the provisions of this section, the debts of the estate shall first be deducted, and the remainder shall be the net estate. Upon all that portion of the net estate in excess of \$25,000.00 the tax of 5% shall be computed. Upon all that portion of the net estate in excess of \$10,000.00 and not exceeding \$25,000.00 the tax of 3% shall be computed; and the court shall determine the amount of tax to be paid by the several devisees, legatees, grantees, or donee of the decedent.

§ 1220-xl. The term "debts," as used in this chapter, shall include, in addition to debts owing by decedent at the time of his death, the local or State taxes due from the estate prior to his death, a reasonable sum for funeral expenses, the court costs, the statutory fees of executors, administrators, or trustees, and no other sum; but said debts shall not be deducted unless the same are approved and allowed, within fifteen months from the death of decedent, as established claims against the said estate, unless otherwise ordered by the judge of the proper county, or, in case of foreign estates where the property within this State consists of personal property only, allowed by the Attorney-General.

§§ 2 to 7. Provide for the appointment of appraisers, their compensation and duties, with the usual regulations as to notice, hearings, appeal and reappraisal.

§ 8. Requires appraisal within three months and payment of the tax within fifteen months after death, or the property will be decreed to be sold.

§ 9. Provides for the valuation of life interests in real property and their

present taxation on the expiration of such life estate, the remainder is valued less any betterments by the remainderman, and the tax then becomes due and payable within sixty days. In case of personalty the court apportions the tax on the value of the life estate and the remainder, and it is then presently payable.

§ 10. Taxes bequests to executors in lieu of commissions when in excess of reasonable compensation.

§ 11. Requires the heir to deduct the tax when a legacy is charged on real estate, makes it a lien, and provides for enforcement in the same manner as the legacy.

§ 12. Requires the executor or administrator to deduct the tax or collect it from the beneficiary, and property may not be delivered until the tax is paid.

§ 13. Makes taxes payable within fifteen months; after that 8 per cent is charged. The time may be extended and interest abated in a proper case by the court, or in case of non-residents by the attorney-general.

§ 14. Provides for proceedings to sell real estate to pay the tax in the same way as to pay debts.

§ 15. Provides that final accounting must show payment of tax before settlement allowed.

§ 16. Gives district court issuing letters jurisdiction in tax proceedings.

§ 17. Empowers the state treasurer to demand information from executors and administrators.

§ 18. Provides for the keeping of an inheritance tax book by the clerk of the district court.

§ 19. Provides for inventory by executors and administrators, and the keeping of a real estate lien book.

§ 20. Authorizes the court to extend the time of appraisement, but not for more than three months.

§§ 21 to 25. Prescribe the duties of the court clerk and provide for collection of delinquent taxes by the attorney-general.

§ 26. No safe deposit company, bank, or other institution, person, or persons holding securities or assets of the decedent shall deliver or transfer the same to the executor or administrator or legal representative of said decedent unless notice of the time and place of such intended transfer be served upon the state treasurer at least five days prior to the transfer thereof, or unless the tax for which such securities or assets are liable under this title shall be first paid. It shall be lawful for, and the duty of, the state treasurer personally, or by any person by him duly authorized, to examine such securities or assets at the time of such delivery or transfer. Failure to serve such notice upon the state treasurer, or to allow such examination on the delivery of such securities or assets to such executor, administrator, or legal representative before said tax is paid shall render such safe deposit company, trust company, bank, or other institution, person, or persons liable for the payment of the taxes due upon such securities or assets as provided in this title.

§ 27. Where any property belonging to a foreign estate is subject to the payment of an inheritance tax in this state, such tax shall be assessed upon the market value of such property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state, and in the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, statements in writing exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said state has been adjudged liable, which statements shall be in affidavit form and sworn to by such executor, administrator or trustee, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property within this state, as the value of the property within this state bears to the value of the entire estate; provided, that in all such cases where the property within this state consists of personal property only, the statements hereinbefore provided for shall be filed with the attorney-general.

§ 28. Whenever any property, real or personal, within this state, belongs to a foreign estate, said foreign estate passes in part exempt from the inheritance tax, and in part subject to such inheritance tax, and it is within the authority



or discretion of the foreign executor, administrator, or trustee administering the estate to dispose of the property not specifically devised to direct heirs or devisees in the payment of the debts owing by the decedent at the time of his death or in the satisfaction of legacies, devisees, or trusts given to direct and collateral legatees or devisees, or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of the state, belonging to such foreign estate, shall be subject to the inheritance tax imposed by this title, and the tax due thereon shall be assessed as provided in the next preceding section of this title, and with the same proviso respecting the deduction of the proportionate share of the indebtedness, as therein provided.

§ 29. If a foreign executor, administrator or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the state treasurer on or before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, and it is the duty of the state treasurer to enforce the payment thereof.

§ 30. Whenever an estate charged, or sought to be charged, with the inheritance tax, is of such a nature or is so disposed that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the state treasurer may, with the approval of the attorney-general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the district court or judge of the proper court, and after such approval, the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate.

§ 31. This title shall apply to all pending estates which are not closed, and the property subjected by this title to the said tax is liable to the provisions incorporated in this title.

**Note:** Constitutionality of rate of 3 per cent on estates of \$10,000 to \$25,000 and 5 per cent on balance sustained. *Re Howe's Estate*, 166 Pac. 990.

## VERMONT.

Taxes only real estate of nonresidents.

Until June 1, 1917, Vermont only taxed collaterals and strangers.

### TABLE OF RATES UNDER STATUTE OF 1917

Became a law June 1, 1917.

CLASS OR RELATIONSHIP	Exemption	Rates			
		\$10,000 to \$25,000	\$25,000 to \$50,000	\$50,000 to \$250,000	In excess of \$250,000
Husband, wife, child, father, mother, or grandchild of a descendant, son-in-law, daughter-in-law, adopted or mutually acknowledged child, step-child, other lineal descendant.	\$10,000	1%	2%	4%	5%
All others, excepting charities named in second table.	None	5% on all.			

TABLE OF RATES AND EXEMPTIONS PRIOR TO APRIL 12, 1917

CLASS OR RELATIONSHIP	Exemption	Rate of tax
Father, mother, husband, wife, lineal descendant, the wife or widow of a son, the husband of a daughter, a step-child, a child adopted as such during his minority in conformity with the laws of this state, a child of a step-child or of such adopted child, bishop in his ecclesiastical capacity for religious uses within this state, or a city or town for cemetery purposes; and every charitable, educational or religious society or institution other than one created and existing under and by virtue of the laws of this state and having its principal office herein.	All	No tax.
All others . . . . .	None	5% on all.

## NO. 52, LAWS 1917.

An Act in Addition to Chapter 38 of the Public Statutes, Relating to the Taxation of Inheritance and Taxable Transfers.

*It is hereby enacted by the General Assembly of the State of Vermont:*

Section 1. The husband, wife, child, father, mother or grandchild of a decedent, the wife or widow of a son or the husband of a daughter thereof, a child adopted during its minority by a decedent during his life under the laws of this State, a step-child of a decedent, a child of such adopted child or of such step-child, or other lineal descendants of a decedent who receives from such decedent, in trust or otherwise, a legacy or distributive share consisting of or arising from property or an interest therein owned by such decedent at his decease and passing by will, the laws of descent or a decree of a court in this State, shall, except as otherwise provided, pay to the State a tax at the following rates:

On the excess of its value over ten thousand dollars and not exceeding twenty-five thousand dollars, at 1%;

On the excess of its value over twenty-five thousand dollars and not exceeding fifty thousand dollars, at 2%;

On the excess of its value over fifty thousand dollars, and not exceeding two hundred fifty thousand dollars, at 4%;

On the excess of its value over two hundred fifty thousand dollars, at 5%.

§ 2. The provisions of this act imposing a tax upon legatees or distributive shares passing to persons enumerated in the preceding section shall not apply to legacies or shares passing from the estates of persons who deceased prior to the date whereon this act takes effect.

§ 3. The two preceding sections shall be construed to be in addition to and forming a part of chapter 38 of the Public Statutes (chapter 48 of the General Laws, as proposed). Unless inconsistent with or repugnant to the context of this act, all provisions of said chapter 38 (chapter 48, G. L.), and of all acts or parts of acts in amendment thereof or in addition thereto shall be construed to apply to the taxes assessed in the first section of this act with the same force and effect as if such last named section were a part of said chapter.

Approved April 12, 1917.

Prior to an act of 1917 the Vermont Inheritance Statute is summarized as follows:

**PUBLIC STATUTES OF 1906, AS AMENDED BY LAWS OF 1912,  
CHAPTER 60.**

§ 822. After making the above exemptions prescribes as to all others: that shall receive in trust or otherwise a legacy or distributive share consisting of or arising from real estate within this State or any interest therein owned by such decedent at the date of his death, and passing by will, the laws of descent,

or a decree of court in this State, or that shall receive in trust or otherwise a legacy or distributive share consisting of or arising from personal estate or any interest therein so passing from such decedent who at the date of his death was an inhabitant of this State and then owned such personal property shall, except as otherwise provided in this chapter, pay to the State a tax of 5% of the value in money of such legacy or distributive share.

§ 823. Every person, unless one of a class exempted in the preceding section, who acquires title to real estate within this State or any interest therein by deed, grant, or gift, except in case of a *bona fide* purchase for a full consideration in money or money's worth, made or intended to take effect in possession or enjoyment upon or after the death of the grantor or donor; and every such person who thus acquires title to personal estate or any interest therein from a deceased person who at the date of his death was an inhabitant of this State and then owned such property, shall pay to the State the same tax that he would have been required to pay had such estate or interest passed to him from such deceased person by will, the laws of descent, or decree of a court in this State. Such tax shall be a first lien on the real or personal estate thus conveyed, until such tax is paid in full.

§§ 824-825. Are repealed by chapter 60, L. 1912.

§ 826. Exempts bequests to maintain burial costs.

§ 827. Requires the executor or administrator to deduct the tax or collect it from the heir or legatee.

§ 828. Gives power of sale to pay the tax in the same manner as to pay debts.

§ 829. Makes the tax a lien on property and forbids its delivery to beneficiary until the tax is paid.

§ 830. Makes the executor or administrator personally liable and requires him to collect the tax from heir to real estate.

§ 831. Requires the heir to deduct the tax when a legacy is charged on real estate makes it a lien and provides for its enforcement.

§ 832. Requires that final accounting shall show that all taxes have been paid.

§ 833. Gives the probate court granting letters jurisdiction in transfer tax proceedings.

§§ 834-837. Provide for appeals proceedings in the Supreme Court hearings and costs.

§§ 838-841. Provide that the probate court may value the estate and for proceedings on such valuation.

§§ 842-847. Provide for valuation by appraisers and proceedings thereon.

§§ 848-852. Provide for valuation by agreement between foreign personal representatives and the commissioner of State taxes. These sections now apply only to real estate within the State.

§§ 853-857. Provide for the valuation of life estates and remainders upon American experience tables with the rate of interest at  $3\frac{1}{2}\%$ .

§ 858. Taxes bequests to executors in lieu of commissions in excess of reasonable compensation.

§ 859. Provides for receipts.

§ 860. Provides for refunding taxes erroneously paid.

§§ 861-869. Provide for the payment of taxes which are due two years after death unless a legacy shall have been paid before them, in which case the tax must be paid on delivery. The probate court may extend the time on good cause shown. Taxes on grants and gifts in contemplation of death are due three months after death of donor or when beneficiary takes possession if he does so before the three months, and such beneficiaries must file an inventory of the property under penalty of not more than 10% nor less than 5% of its value to be recovered in a civil action. Taxes not paid when due bear interest from that date.

§§ 870-871. Provide for reports to the commissioner of State taxes by the register of probate as to estates liable to the tax.

§ 872. Authorizes the commissioner of State taxes to apply for administration if no proceedings have been brought within four months after death.

§ 873. Requires the register of probate to notify the commissioner of such cases.

The remaining sections, 874 to 901, refer to the collection of taxes on non-residents and are now obsolete, as the amendment of 1912 imposes such taxes only on real estate within the State.

#### AMENDMENT OF 1919.

By chapters 48 and 49, Laws of 1919, the probate may appoint an appraiser to represent the State upon the application of the commissioner of taxes. The exemption for cemetery purposes is confined to cemeteries within the State. Otherwise the law stands unchanged since the amendments of 1917.

### VIRGINIA.

Does not tax transfers of stock in domestic corporations.

Virginia has imposed a collateral inheritance tax since 1844. From 1903 to 1916 the rate was 5%. The act of 1916 imposed the rates given in the table below. A new act was passed in 1918, which applies to all estates where death occurred after June 21, 1918.

TABLE OF RATES AND EXEMPTIONS AS TO ALL PERSONS DYING AFTER MARCH 22, 1916, AND BEFORE June 21, 1918\*

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates			
		In excess of exemption to \$50,000	\$50,000 to \$250,000	\$250,000 to \$1,000,000	In excess of \$1,000,000
Grandparents, parents, husband, wife, brother, sister or lineal descendant.	\$15,000	1%	2%	3%	4%
All others except state, county, municipal, benevolent, charitable, educational or religious purposes which are exempted.	None	5%	10%	15%	20%

TABLE OF RATES AND EXEMPTIONS AS TO ESTATES OF ALL PERSONS DYING AFTER JUNE 21, 1918

Class or Relationship	Exemption	Above exemption to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	\$500,000 to \$1,000,000	In excess of \$1,000,000
Class A. Husband, wife, lineal ancestor, lineal descendant.	\$10,000	1%	2%	3%	4%	5%
Class B. Brother, sister, nephew, niece.	4,000	2%	4%	6%	8%	10%
Class C. All others, except bequests for State, county, municipal, charitable, educational or religious purposes, or institutions exempt from State taxation, which are exempt from inheritance tax.	1,000	5%	7%	9%	12%	15%

**VIRGINIA CODE OF 1903, AS AMENDED BY LAWS OF 1910, CHAPTER 148, AND LAWS OF 1916, CHAPTER 484 (APPROVED MARCH 22, 1916).**

§ 44 (a). Where any estate in this Commonwealth of any decedent shall pass under a will or the laws regulating descents and distributions to any person or for the use of any person the estate so passing shall be subject to a tax.

The subdivision then prescribes the rates and exemptions as shown in the foregoing table.

(b) The personal representative of such decedent shall pay the whole of such tax, except on real estate, to sell which or to receive the rents and profits of which he is not authorized by the will, and the sureties on his official bond shall be bound for the payment thereof.

(c) Where there is no personal estate, or the personal representative is not authorized to sell or receive the rents and profits of the real estate, the tax shall be paid by the devisee or devisees, or those to whom the estate may descend by operation of law; and the tax shall be a lien on such real estate, and the treasurer may rent or levy upon and sell so much of said real estate as shall be sufficient to pay the tax and expenses of sale, etc.

(d) Such payment shall be made to the treasurer of the county or city in which certificate was granted such personal representative for obtaining probate of the will or letters of administration.

(e) The corporation or hustings court of a city, the circuit court of a county, or city, the chancery court of the city of Richmond, the law and chancery court of the city of Norfolk, or the clerk of the circuit court of a county or city, before whom a will is probated or administration is granted shall determine the collateral inheritance tax, if any, to be paid on the estate passing by will or administration, and shall enter of record in the order book of the court or clerk, as the case may be, by whom such tax shall be paid and the amount to be paid. The clerk of the court shall certify a copy of such order to the treasurer of his county or city and to the auditor of public accounts, for which services the clerk shall be paid a fee of two dollars and fifty cents by the personal representative of the estate. The auditor of public accounts shall charge the treasurer with the tax, and the treasurer shall pay the same into the treasury as soon as collected, less a commission of five per centum. Every personal representative or other party or officer failing in any respect to comply with this section shall forfeit one hundred dollars.

(f) Any personal representative, devisee or person to whom the estate may descend by operation of law, failing to pay such tax before the estate on which it is chargeable is paid or delivered over (whether he be applied to for the tax or not) shall be liable to damages thereon at the rate of ten per centum per annum for the time such estate is paid or delivered over until the tax is paid, which damages may be recovered, with the tax, on motion of the Commonwealth, and in the name of the Commonwealth against him in the circuit court for the county or in the corporation court of the city wherein such tax was assessed, except that in the city of Richmond, the motion shall be in the chancery court. Such estate shall be deemed paid or delivered at the end of a year from the decedent's death, unless and except so far as it may appear that the legatee or distributee has neither received such estate, nor is entitled then to demand it. All taxes upon said inheritance paid into the State treasury shall be placed to the credit of the public school fund of the Commonwealth and shall be apportioned according to school population and be used for the primary and grammar grades.

**ACT OF 1918, CHAPTER 238, PP. 416-432.**

**Note Issued by Tax Commission.**

Notes: (a) Bonds, notes, evidences of debt, money, shares of stock, the estate of a nonresident of Virginia, inherited by or bequeathed to a resident

of Virginia, are not subject to inheritance tax in Virginia because such property is not within the jurisdiction of Virginia.

(b) Real estate situate outside of the State of Virginia devised to or inherited by a resident of Virginia is not subject to inheritance tax in Virginia because such real estate is not within the jurisdiction of Virginia.

(c) A gift, devise or bequest made exclusively to this State, or exclusively to a county, town or city in this State, or exclusively for charitable, educational or religious purposes in this State; or for the exclusive benefit of any institution, association or corporation in this State whose property is exempt from taxation by the laws of this State, is not liable to any inheritance tax. (Sub-section 1.)

A gift, devise or bequest to any other State, or to a county, town or city in any other State, or for charitable, educational or religious purposes in any other State, is liable to inheritance tax in Virginia.

(d) Bonds of the United States and bonds of the State of Virginia, although exempt in Virginia from taxation as property, are liable to inheritance tax when they are part of an estate subject to inheritance tax in Virginia.

(e) In determining the tax it is proper to make deduction for debts due by the estate and the cost of administration of the estate.

### THE STATUTE.

§ 44. (As amended by act approved March 15, 1918, chap. 238, pages 416-422, Acts of Assembly 1918.) 1. All property within the jurisdiction of the Commonwealth, real, personal and mixed, and any interest therein, whether belonging to inhabitants of the Commonwealth or not, which shall pass by will, or grant or gift (except in case of a *bona fide* purchase for full consideration in money or money's worth) made or intended to take effect in possession or enjoyment after the death of the grantor, whether absolutely or in trust, except to or for the use of (Class A) the husband, wife, lineal ancestor, or lineal descendant of a decedent, or to or for the use of (Class B) the brother, sister, nephew, or niece of a decedent, shall be subject to a tax of five per centum of the fair market value or so much thereof as is in excess of one thousand dollars and not in excess of fifty thousand dollars, to a tax of seven per centum upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, to a tax of nine per centum upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, to a tax of twelve per centum on all in excess of five hundred thousand dollars and up to one million dollars, and to a tax of fifteen per centum upon all in excess of one million dollars; and such property which shall so pass to or for the use of a member of Class A shall be subject to a tax of one per centum of the fair market value of so much thereof as is in excess of ten thousand dollars and not in excess of fifty thousand dollars, to a tax of two per centum upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, to a tax of three per centum upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, to a tax of four per centum upon all in excess of five hundred thousand dollars and up to one million dollars, and to a tax of five per centum upon all in excess of one million dollars; and such property which shall so pass to or for the use of a member of Class B shall be subject to a tax of two per centum of the fair market value of so much thereof as is in excess of four thousand dollars and not in excess of fifty thousand dollars, to a tax of four per centum upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, to a tax of six per centum upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, to a tax of eight per centum upon all in excess of five hundred thousand dollars and up to one million dollars, to a tax of ten per centum upon all in excess of one million dollars; but no such gift, bequest, devise or distributive share of an estate which shall so pass to or for the use of the husband, wife, lineal ancestor or lineal descendant of a decedent, unless its fair market value exceed the sum of ten thousand dollars, and no such gift, bequest, devise or distributive share of an estate which shall so pass to or for

the use of the brother, sister, nephew or niece of a decedent, unless its fair market value exceed the sum of four thousand dollars, and no other such gift, bequest, devise or distributive share of an estate unless its fair market value exceed the sum of one thousand dollars, nor any such gift, devise or bequest made exclusively for State, county, municipal, charitable, educational or religious purposes in this State, nor any such gift, devise or bequest made for the exclusive benefit of any institution, association or corporation in this State whose property is exempt from taxation by the laws of this State, shall be subject to the provisions of this act.

2. The personal representative of such decedent shall withhold and pay the whole of said tax, except the tax on the transfer of such real estate belonging to the estate of the decedent as he is not authorized to sell or receive the rents and profits from, and the sureties on his official bond shall be bound for the payment thereof.

3. Where the personal representative is not authorized to sell or receive the rents and profits from any real estate belonging to the estate of his decedent and passing at his death, the taxes upon the transfer of such real estate shall be paid by the devisee, devisees, or heirs-at-law of such decedent, or other person or persons to whom such real estate shall pass, whether by the terms of the decedent's will or of any deed or grant made by him in his life time and taking effect at his death, or by operation of the statutes regulating descents and distributions.

4. The tax on the transfer of any property, of whatever nature, as to which the decedent shall die intestate, or which is not under the control of a personal representative, shall be paid by the distributee, distributees, heir or heirs-at-law of such decedent, or by the other person or persons to whom such property shall pass under the laws regulating descents and distributions, or by operation of any deed or gift made by the decedent in his life time and taking effect upon his death.

5. The corporation or hustings court of a city, or the circuit court of a county or city, the chancery court of the city of Richmond, the law and chancery court of the city of Norfolk, or the clerk of the circuit court of a county or city or the clerk of the corporation or hustings court of the city, before whom the will is probated or administration is granted, shall determine the amount of the tax provided for by this act to be imposed upon the transfer of such property as passes by such will, or as comes into the hands of such administrator for the purpose of ascertaining the taxes due under this act, the court of every city and county having jurisdiction to admit wills to probate and to grant letters of administration shall designate one of its commissioners whose duty it shall be, except where the estate is administered in a suit, to investigate and report to the court or clerk, as the case may be, the value of the estate of every decedent chargeable with a tax under this act, and the probate of whose will or letters of administration on whose estate is had in said court or clerk's office, and report the amount and kinds thereof and the persons who are entitled to the same; and the said commissioner shall be allowed for his services for making said appraisal and report one-half of one per cent. of said estate so taxable, payable out of said estate as part of the cost of administration; provided, however, that said compensation shall in no case be less than five nor more than fifty dollars, except that for special services rendered the court may allow greater compensation. Upon the report of said commissioner the said court or the clerk of any court clothed with probate powers and in the exercise thereof, shall determine the inheritance taxes, if any, to be paid on the estate passing by will or administration, and shall enter of record in the order book of the court or clerk, as the case may be, the amount of the tax to be paid and by whom. And no estate of any decedent, subject to tax under this act shall be distributed unless and until the tax has been assessed thereon as provided by this act. The clerk of the court shall certify a copy of said order to the treasurer of his county or city and a copy to the auditor of public accounts, for which service such clerk shall be paid a fee of two dollars and fifty cents by the personal representative of such decedent. The Auditor of Public Accounts shall charge the treasurer

with the tax and the treasurer shall pay the same into the treasury as collected, less a commission of five per centum.

6. The amount of the tax on a transfer of any property, of whatever nature as to which the decedent shall die intestate, or which is not under the control of a personal representative, shall be determined in the same manner provided in paragraph five of this act by the corporation or hustings court of a city, or the circuit court of a county or city, the chancery court of the city of Richmond, the law and chancery court of the city of Norfolk, or the clerk of the circuit court of the county or city, or other court in which certificate was granted the personal representative for obtaining probate of the will or letters of administration; and if there has been no qualification on the estate of the decedent, the amount of said tax shall be determined in the same manner provided in paragraph five of this act by the corporation or hustings court of a city, or the circuit court of a county or city, the chancery court of the city of Richmond, the law and chancery court of the city of Norfolk, or the clerk of the circuit court of the county or city, or other court, in which qualification might have been had. Entry shall be made in the order book of the court or clerk, as the case may be, showing the nature and value of the property so passing, the amount of the tax determined and by whom the same shall be paid. The clerk of the court shall certify a copy of such order to the treasurer of his county or city and a copy to the Auditor of Public Accounts, for which service the clerk shall be paid a fee of two dollars and fifty cents by the person or persons to whom such property passes. The Auditor of Public Accounts shall charge the treasury with the tax and the treasurer shall pay the same into the treasury as collected, less a commission of five per centum.

7. Said taxes shall be assessed upon the actual value of the property at the time of the death of the decedent. In every case where there shall be a devise, descent, bequest or grant to take effect in possession or enjoyment after the expiration of one or more life estates, the tax shall be assessed on the actual value of the property or the interest of the beneficiary therein at the time when he becomes entitled to the same in possession or enjoyment. The value of an annuity or a life interest in such property, or any interest therein less than an absolute interest, shall be determined by the annuity tables provided for by section twenty-two hundred and eighty-one of the Code of Virginia. In every case in which it is impossible to compute the present value of any interest in property so passing the court or clerk then engaged in determining the amount of the said tax shall, subject to the approval of the Auditor of Public Accounts, affect such settlement of the tax as such court or clerk shall deem to be for the best interest of the Commonwealth, and payment of the same so agreed upon shall be a full satisfaction of such taxes.

8. The clerk by whom the tax is to be determined, or the clerk of the court by which the tax is to be determined, shall serve a written notice on the attorney for the Commonwealth of the city or county in which such determination shall be had, and on each personal representative, devisee, heir-at-law, or other person to be charged with taxes by the said clerk or court, at least ten days before the entry of the order charging the taxes, and said notice shall set forth the time and place at which such determination shall be had; but the mailing of said notice to the last known address of the party to be notified, or to the attorney at law representing such party, shall be sufficient service under this section.

9. Taxes imposed by the provisions of this act shall be payable to the treasurer of the county or city in which the amount of such tax was determined and at the expiration of one year after the death of the decedent. In all cases in which there shall be a grant, devise, descent or bequest to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, the taxes thereon shall be payable by the executors, administrators or trustees in office when such right of possession occurs, or, if there is no such executor, administrator or trustee, by the person or persons so entitled thereto, and at the expiration of one year after the date when the right of possession accrues to the person or persons so entitled. If the taxes are not paid when due a penalty thereon of twenty per centum and



interest at the rate of six per centum per annum on the total amount of taxes and penalty from the date when the same was due until paid, shall be added to the amount of said taxes and collected as a part of same.

10. Property of which a decedent dies seized or possessed subject to taxes as aforesaid, in whatever form of investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not affect any personal property after the same has been sold or disposed of to a *bona fide* purchaser for value by the executors, administrators or trustees. The lien charged by this act upon any real estate or separate parcel thereof may be discharged by the payment of the taxes due and to become due upon said real estate or separate parcel, or by an order or decree of the court discharging said lien and securing the payment to the Commonwealth of the taxes due or to become due by bond or deposit. The treasurer may levy upon and sell so much of said property, both real and personal, as shall be sufficient to pay the taxes and expenses of sale, or he may rent or lease any portion of the real estate charged with the taxes for cash sufficient to pay the amount of taxes due.

11. If the amount of the taxes charged is determined by a court, the person or persons so charged with the taxes shall have the right of appeal to the Supreme Court of Appeals as in other cases.

12. Any person charged with taxes under this section, aggrieved by an order of any clerk of a court determining the amount of said taxes, may, within one year after the date on which such order was entered, apply for relief to the court of which such clerk is an officer. An application in writing, setting forth the manner in which the applicant considers himself aggrieved, shall be filed with the clerk by whom such order was made, at least ten days before the hearing of the cause, and notice of the time at which such application will be presented to the court shall be served upon the clerk of the court and the attorney for the Commonwealth, and a copy of both the application and the notice mailed to the Auditor of Public Accounts. Said notice shall be served on the clerk and the attorney for the Commonwealth, and a copy thereof mailed to the Auditor of Public Accounts at least fifteen days prior to the date on which the application is presented to the court. The attorney for the Commonwealth shall defend the application and no order made in favor of the applicant shall have any validity unless it is stated therein that such attorney did so defend; that the clerk charging the taxes, or his successor, was examined as a witness touching the application; and the facts proved upon such hearing be certified.

13. If the court be satisfied that the applicant is erroneously charged in the clerk's order and that the erroneous charge was not caused by the failure or refusal of the applicant to furnish an inventory of the property subject to the tax to the clerk of the court, the court may order that the order of the clerk be corrected. If the order of the clerk charges more than the proper amount, the court may order that the applicant be exonerated from the payment of so much as is erroneously charged, if not already paid, and if paid, that it be refunded to him. If the order of the clerk charges less than the proper amount, the clerk shall order that the applicant pay the proper taxes. A copy of any order made under this section correcting an erroneous order of a clerk shall be certified by the court to the Auditor of Public Accounts and the Treasurer of the State.

14. If, from the statement of the facts or other evidence, the Auditor of Public Accounts shall be of opinion that the order of the court, of the orders of the clerk, determining the taxes is erroneous, he may, within one year from the time such order is made, file a petition for a rehearing or review of such order; said petition may be filed in the court by which the order was made or of which the clerk is an officer, or with the judge thereof in vacation, and shall be in the name of the Commonwealth, and on the filing of the same shall operate as a supersedeas and the matter shall thereupon be reheard or the order reviewed in said court, and witnesses examined in the same manner as if no previous determination had been had. The petition shall be presented and

the hearing conducted by the attorney for the Commonwealth of the county or corporation.

At the rehearing the court shall make such order therein as may be proper, and should the order of the court be against the Commonwealth, the Auditor of Public Accounts may take an appeal to the Supreme Court of Appeals, and a supersedeas may be granted in such case in the same manner as now provided by law in cases other than cases of appeal of right. No costs shall be adjudged against the Commonwealth on the appeal, but costs may, in the discretion of the court, be awarded against the clerk of the court who charged the tax, if the same be erroneous.

15. Of all taxes upon said inheritances paid into the State treasury one-half shall be placed to the credit of the public school fund of the Commonwealth, and shall be apportioned according to school population, and the other half shall be remitted to the counties and cities in which such taxes are respectively collected, and all of such taxes shall be used for the primary and grammar grades of the public free schools of the State and in such counties and cities.

16. All acts and parts of acts inconsistent with this act and specifically section forty-four of an act entitled an act to raise revenue for the support of the government and the public free schools and to pay the interest on the public debt, and to provide a special tax for pensions as authorized by section one hundred and eighty-nine of the Constitution, approved April the sixteenth, nineteen hundred and three, are hereby repealed.

### WASHINGTON.

Taxes all property of nonresidents within the State, including stock in domestic corporations.

Classification	On all sums not exceeding first \$50,000	On all sums in excess of \$50,000 and not exceeding \$100,000	On all sums in excess of \$100,000 and not exceeding \$250,000	On all sums in excess of \$250,000
Father, mother, husband, wife, lineal descendant, adopted child or lineal descendant of adopted child.	*1%	2%	3%	5%
Brother, sister, aunt, uncle, niece, nephew.	3%	5%	7%	9%
Collateral relatives beyond the third degree and strangers to the blood.	6%	9%	12%	15%
Bequests for the relief of aged, indigent and poor people, maintenance of sick or maimed; support or education of orphans or indigent children.		No tax		

\* First \$10,000 exempt.

**LAWS OF 1901, CHAPTER 55, AS AMENDED BY LAWS OF 1905, CHAPTERS 93, 114 AND 115; LAWS OF 1907, CHAPTER 217; LAWS OF 1911, PAGE 60, AND LAWS OF 1917, CHAPTER 146.**

Section 1. (Code, § 9182.) All property within the jurisdiction of this State, and any interest therein, whether belonging to the inhabitants of this State or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritances of this or any other State, or by deed, grant, sale or gift made in contemplation of the death of the grantor or donor, or by deed, grant or sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor to any person in trust or otherwise, shall, for the use of the State, be subject to a tax as provided

for in section 9183, after the payment of all debts owing by the decedent at the time of his death, the local and State taxes due from the estate prior to his death, and a reasonable sum for funeral expenses, monument or crypt, court costs, including cost of appraisal made for the purpose of assessing the inheritance tax, the fees of executors, administrators or trustees, reasonable attorney's fees, and family allowance not to exceed \$1,000, and no other sum, but said debts shall not be deducted unless the same are allowed or established within the time provided by law, unless otherwise ordered by the judge or court of the proper county, and all administrators, executors and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, with lawful interest until the same shall have been paid. The inheritance tax shall be and remain a lien on such estate from the death of the decedent until paid.

§ 2. *Rate of Levy.* The inheritance tax shall be imposed on all estates subject to the operation of this act at the following rate:

If passing to or for the use of a father, mother, husband, wife, lineal descendant, adopted child or lineal descendant of an adopted child, the tax shall be one per centum of any value not exceeding fifty thousand dollars; two per centum of any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; three per centum of any value in excess of one hundred thousand dollars and not exceeding two hundred fifty thousand dollars; five per centum of any value in excess of two hundred fifty thousand dollars: *Provided, however,* That in the above cases, ten thousand dollars of the net value of any estate shall be exempt from such duty or tax.

If passing to or for the use of a sister, brother, uncle, aunt, nephew or niece, the tax shall be three per centum of any value not exceeding fifty thousand dollars; five per centum of any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; seven per centum of any value in excess of one hundred thousand dollars and not exceeding two hundred fifty thousand dollars; nine per centum of any value in excess of two hundred fifty thousand dollars.

If passing to or for the use of collateral heirs beyond the third degree of relationship or to strangers to the blood, the tax shall be six per centum of any value not exceeding fifty thousand dollars; nine per centum of any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; twelve per centum of any value in excess of one hundred thousand dollars and not exceeding two hundred fifty thousand dollars; fifteen per centum of any value in excess of two hundred fifty thousand dollars. (L. '07, § 2, p. 500; L. '11, § 2, p. 60; L. '17, § 1, p. 196; Rem. & Bal., § 9183.)

§ 3. (Code, § 9184.) Except as to the limitations prescribed in section two from the inheritance tax and real property located outside the State passing in fee from the decedent owner, the tax imposed under section two shall hereafter be assessed against and be collected from property of every kind, which at the death of the decedent owner is subject to, or thereafter, for the purpose of distribution, is brought into this State and becomes subject to the jurisdiction of the courts of this State for distribution purposes, or which was owned by any decedent domiciled within the State at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the State.

§ 4. (Code, § 9185.) In case of any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay a collateral inheritance tax in this State, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this State. In the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction and with the State board of tax commissioners duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of

said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property, as the value of the property within this State bears to the value of the entire estate.

§§ 5, 6. (Code, §§ 9186, 9187.) Are repealed by chapter 146, Laws 1917.

§ 7. (Code, § 9188.) Provides for the valuation of life estates and remainders on the basis of the Combined Actuaries' Mortality Tables at 4%. It further provides that remaindermen may defer payment of the tax until they come into possession by filing a bond in the amount of the tax conditioned for its payment within 60 days after coming into possession of the property.

Code, §§ 9188-1 (added by L. 1917). Provides for the present taxation of contingent remainders at the lowest possible rate, requiring the transferee to pay the difference if a higher rate proves to be due when the remainder falls in.

§ 8. (Code, § 9189.) Taxes bequests to executors in lieu of commissions above reasonable compensation.

§ 9. (Code, § 9190.) Requires the heir to deduct the tax where a legacy is charged upon real estate, makes the tax a lien and may be enforced in the same way as the legacy.

§ 10. (Code, § 9191.) Requires the executor or administrator to deduct the tax or collect it from the beneficiary and may not deliver property unless the tax is paid.

§ 11. (Code, § 9192.) All taxes imposed by this act shall take effect and accrue upon the death of the decedent or donor. If such tax is not paid within fifteen months from the accruing thereof, interest shall be charged and collected at the rate of eight per centum per annum unless by reason of necessary litigation such tax cannot be determined and paid as herein provided, in which case interest at the rate of eight per centum per annum shall be charged upon such tax from and after the time the cause of such delay is removed. In all cases where a bond shall be given under the provisions of section 9198 interest shall be charged at the rate of eight per centum per annum from and after a period of sixty days from the time that the person or persons owning the beneficial interest come into the possession of same until the payment thereof. [As amended by L. 1917.]

§ 12. (Code, § 9193.) Provides for the appointment of appraisers and the usual proceedings before them.

§ 13. (Code, § 9194.) If a foreign executor, administrator or trustee shall assign any corporate stock, or obligations in this State standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the State Treasurer on or before the transfer thereof, otherwise, the corporation permitting its stock to be so transferred on its books shall be liable to pay such tax. No safe deposit company, bank or other institution, person or persons, holding any securities, property or assets of any non-resident decedent, shall deliver or transfer the same to any nonresident executor, administrator or representative of such decedent, until after a notice in writing of the time and place of such transfer shall have been duly given the State board of tax commissioners at least ten (10) days prior thereto, and the tax imposed by this act paid thereon, and every such safe deposit company, bank or other institution, person or persons, shall be liable for the payment of such tax.

§ 14. (Code, § 9195.) Requires the petitioner in all probate proceedings to furnish a list of heirs or beneficiaries together with an inventory.

§ 15. (Code, § 9196.) Authorizes the court to extend the time for filing the inventory.

§ 16. (Code, § 9197.) Provides for the compounding of doubtful tax claims.

§ 9197-1. When any person dies leaving property within the jurisdiction of the State of Washington, which shall pass by the statutes of inheritance of this or any other State, or by deed, grant, sale or gift made in contemplation of the death of the grantor or donor, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any person in trust or otherwise, and there has been no application for letters of administration of the estate of such deceased person,

or when administration of any estate has been completed without an adjudication of the inheritance tax, the liability of such property for the payment of an inheritance tax may be determined without administration in the manner hereinafter provided.

When any person interested in such property shall deem the same not subject to an inheritance tax, or when he admits the liability for such tax but desires to adjust the same, he may file a petition in the Superior Court of the proper county to determine the questions arising under the inheritance tax statutes. Such petition shall contain the name and date of death of decedent, the description and estimated value of all property involved, the names and places of residence of all persons interested in the same, and such other facts as are necessary to give the court jurisdiction. The court shall thereupon set a day for hearing said petition and a copy thereof, together with a notice of the time and place of such hearing, shall be served by the petitioner or his attorney upon the State board of tax commissioners and on each person interested in said property, at least twenty days before the date of hearing, if served personally, and if served by publication the service shall be the same as the service of summons by publication in civil actions.

The court shall hear said matter upon the relation of the parties, the testimony of witnesses and evidence produced in open court, and, if it shall be found that the property is not subject to any tax, the court shall make and enter an order determining that fact; but, if it shall appear that the whole or any part of said property is subject to a tax, the same shall be appraised and the tax levied and collected as in other cases. An adjudication by the Superior Court, as herein provided, shall be conclusive as to the lien of said tax, subject to the right of appeal to the Supreme Court allowed by the laws of the State. [Added by chap. 146, L. 1917.]

§ 17. (Code, § 9198.) Requires the State board of tax commissioners to take general supervision over the collection of tax claims.

§ 18. (Code, § 9199.) Prescribes the charitable exemptions shown in the table of rates.

## WEST VIRGINIA.

Taxes all property of nonresidents within the State, including stock in domestic corporations.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates				
		Above exemption up to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Wife, husband, child, lineal descendant or lineal ancestor.	Widow, \$15,000; others, \$10,000	1%	1½%	2%	2½%	3%
Brother or sister of the whole blood.	None	3%	4½%	6	7½%	9%
All others except charitable bequests.	None	5%	7½%	10%	12½%	15%
Bequests to be used within the state for education, literary, scientific, religious or charitable purposes or to state, county or municipal corporations for public purposes.	All	No tax.				

**LAWS OF 1904, CHAPTER 6, AS AMENDED BY LAWS OF 1907, CHAPTER 55; LAWS OF 1909, CHAPTER 63, AND LAWS OF 1913, CHAPTER 25.**

Section 1. A tax, payable into the treasury of the State, shall be imposed upon the transfer, in trust or otherwise, of any property, or interest therein, real, personal or mixed, if such transfer be,

(a) By will or by the laws of this State regulating descents and distributions from any person who is a resident of the State at the time of his death and who shall die seized or possessed of the property;

(b) By will or by laws regulating descents and distributions, of property within the State, or within its jurisdiction, and the decedent was a nonresident of the State at the time of his death;

(c) By a resident, or be of property within the State, or within its jurisdiction, by a nonresident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, bargainor or donor, or intended to take effect in possession or enjoyment at or after such death.

(d) If any person shall transfer any property which he owns or shall cause any property, to which he is absolutely entitled to be transferred to, or vested in, himself and any other person jointly, so that the title therein, or in some part thereof, vest no survivorship in such other person, a transfer shall be deemed to occur and to be taxable under the provisions of this act upon the vesting or such title.

(e) Whenever a person shall exercise by will a power of appointment derived from any disposition of property, such appointment, when made, shall be deemed a transfer taxable under the provisions hereof.

§ 2. Prescribes the rates and exemptions shown in the foregoing table.

§ 3. Provides for the deduction from market value of estate of debts and incumbrances created by the deceased on good faith and for which no reimbursements can be obtained.

§ 4. Taxes bequests ostensibly in payment of a debt over and above the true value of the debt and bequests to executors in lieu of commissions in excess of reasonable value of their services.

§ 5. Provides for the apportionment of the tax between life tenant and remaindermen by the State tax commissioners and remaindermen must pay at the same time and manner as though vested in possession.

§ 6. A transfer of personal property of a resident of the State which is not therein or within the jurisdiction thereof, at the time of his death, shall not be taxable, under the provisions of this act if such transfer or the property be legally subject in another State or country to a tax of a like character and amount to that hereby imposed, and if such tax be actually paid or guaranteed or secured, in accordance with the law in such other State or country, if legally subject in another State or country to a tax of like character, but of less amount than that hereby imposed and such tax be actually paid or guaranteed or secured, as aforesaid, the transfer of such property shall be taxable under this act to the extent of the difference between the tax thus actually paid, guaranteed or secured, and the amount for which such transfer would otherwise be liable hereunder, or within the jurisdiction thereof.

The provisions of this act shall apply to the transfer of the following property belonging to deceased persons, nonresidents of this State which shall pass by will or inheritance under the law of any other State or country, and such property shall be subject to the tax imposed by this section, to-wit:

(a) The transfer of all real estate and tangible personal property, including money on deposit in this State;

(b) The transfer of all intangible personal property, including bonds, securities, shares of stock and choses in action, the evidence of ownership to which shall be actually within this State; and

(c) The transfer of the shares of capital stock of all corporations organized and existing under the laws of this State, the certificates of which shares of stock shall be within or without this State.

The transfer of any property mentioned in subdivisions (a) and (b) and

the transfer of the shares of stock mentioned in subdivision (c) of this section, after the decease of the person owning the same, shall not be legal until the inheritance or transfer tax has been paid into the State treasury and a certificate of release to that effect executed by the State tax commissioner. No corporation organized or existing under the laws of this State shall transfer any such shares of stock, unless notice of the time of such intended transfer is served upon the State tax commissioner at least fifteen days prior to such transfer or until the State tax commissioner shall consent in writing thereto. Any such corporation making the transfer of any such shares of stock before the inheritance tax is paid, or before obtaining the consent of the State tax commissioner thereto, shall be liable to the State of West Virginia for said tax, together with any interest that may accrue thereon, and in addition thereto a penalty of five hundred dollars; which liability for such tax and interest and penalty may be enforced by a proper action in the name of the State of West Virginia.

§ 7. Makes the tax a lien, forbids transfer of property without its payment, and if so transferred makes executors, administrators and beneficiaries personally liable and declares that no statute of limitation shall be a defense to recovery.

§ 8. Provides for suspending the whole or a proportionate part of the tax pending litigation or settlement of a doubtful claim.

§ 9. Makes the tax due on assessment and charges interest at 4% from time when due.

§ 10. Provides for payment of the tax and sale of property in the same manner as debts.

§ 11. Whenever any foreign executor, administrator or trustee shall assign or transfer in this State any stock, bond or other security liable to any such tax, standing in the name of, or in trust for a decedent, he shall have the tax assessed on such transfer by the State tax commissioner, and shall pay the tax into the State treasury on the transfer thereof; otherwise any person having authority to make or permit such transfer, who shall make or permit it, shall be liable to pay the tax if he then had knowledge, or reasonable cause to believe, that the property was liable to tax.

§ 13. Provides for reports by clerk of County Court regarding transfers subject to tax.

§ 13. Requires executors, administrators and trustees to file with their inventory a statement as to any of the property they believe to be subject to tax.

§ 14. The State tax commissioner shall as soon as may be, from the statements and reports made by the clerk and the personal representative or trustee or other person as aforesaid, from the inventory of the estate, if there be one, and from such other information as he may be able to procure, ascertain whether any transfer of any property be subject to a tax under the provisions of this chapter, and, if it be subject to tax, shall ascertain and assess the amount of the tax to which it is subject. If in his opinion the transfer of any of the property so transferred is taxable under the provisions of this act, he shall make his certificate to that effect, setting out:

(a) The amount of such property liable to such tax.

(b) The rate of tax thereon.

(c) The names of the beneficiaries thereof.

(d) Their degree of relationship to the decedent.

(e) The amount of tax; and it shall be the duty of the county clerk and personal representative of every such estate, and if there be no personal representative the beneficiaries thereof to show in their report to the State tax commissioner, the information upon which to base such assessment. The State tax commissioner shall make duplicate certificates of his assessment, one of which he shall forward to such personal representative, trustee, grantee, vendee or bargainee.

If the tax is not paid within thirty days after the assessment thereof, the State tax commissioner may forward the other certificate to the clerk of the County Court of the county wherein the property or the greater part thereof in

value is located, which certificate shall be recorded by the clerk in the trust deed book in his office. For recording such certificate of assessment the clerk shall charge a fee of fifty cents to be paid out of the estate.

§ 16. Provides for the appointment of appraisers and the proceedings before them, and the remaining sections 17 to 26 provide for reports, compounding of uncertain tax claims, fees, records and proceedings for the collection of delinquent taxes.

## WISCONSIN.

Taxes all property of nonresidents within the State, including stock in domestic corporations.

TABLE No. 1.—TABLE OF RATES AS FIXED BY CHAPTER 320, LAWS 1917, IN EFFECT JUNE 1

CLASS OR RELATIONSHIP	Amount of exemption	Above exemption to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child, or its issue.	Widow, \$10,000; others, \$2,000.	1%	2%	3%	4%	5%
Brother, sister, or their descendants, son-in-law, daughter-in-law.	\$500	2%	4%	6%	8%	10%
Aunt or uncle and their descendants.	\$250	3%	6%	9%	12%	15%
Brother or sister of grand parents and their descendants.	\$150	4%	8%	12%	16%	20%
All others except exempt charitable and public bequests.	\$100	5%	10%	15%	20%	25%

Note: (a) The Statute (Chapter 320, L. 1917) provides: "No such tax, however, shall exceed 15 per cent. of the property transferred to any beneficiary. This abolishes the excessive rates shown in the last two columns and their only effect is on the trifling exemption."

(b) The charitable bequests exempted are shown in Table No. 2.

(c) This further reciprocal exemption is provided. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, provided such property is not without this state temporarily nor for the sole purpose of deposit or safekeeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state.



TABLE No. 2.—TABLE OF RATES AND EXEMPTIONS

In effect prior to June, 1917

CLASS OR RELATIONSHIP	Amount of exemption	Graded rates				
		Above exemption up to \$25,000	\$25,000 to \$50,000	\$50,000 to \$100,000	\$100,000 to \$500,000	In excess of \$500,000
Husband, wife, lineal issue, lineal ancestor, adopted or mutually acknowledged child or its issue.	Widow, \$10,000; others, \$2,000.	1%	1½%	2%	2½%	3%
Brother, sister or their descendants, son-in-law, daughter-in-law.	\$500	1½%	2½%	3%	3½%	4½%
Aunt, or uncle and their descendants.	\$250	3%	4½%	6%	7½%	9%
Brother or sister of grandparents and their descendants.	\$150	4%	6%	8%	10%	12%
All others except charitable and public bequests.	\$100	5%	7½%	10%	12½%	15%
Municipal corporations for strictly town, county or municipal purposes, corporations organized under laws of the state, solely for religious, charitable or educational purposes, which shall use the property solely for those purposes.	All . . . . .	No tax.				

## THE STATUTE.

Wisconsin has a much amended statute. The law is constituted by chapters 44 and 249, Laws of 1903; chapter 96, Laws of 1905; chapter 500, and section 36, chapter 660, Laws of 1907, and chapters 38 and 504, Laws of 1909; chapters 450 and 530, Laws of 1911; chapters 627, 643, 763 and 773, Laws of 1913. [As amended by chapters 253 and 498, Laws of 1915, and chapters 318, 319, 320, 321 and 322, Laws of 1917.]

The 1915 amendments: Chapter 253, Laws of 1915, took insurance money payable upon death from under the operation of the income tax, and made it subject to the inheritance tax as a part of the estate of the decedent. Chapter 498, Laws of 1915, provided for incorporation of trustees to whom a charitable, religious or educational bequest had been left within two years after death. This amendment is in substance repealed, and the law changed substantially to what it had been theretofore by chapter 321 of 1917.

The 1917 amendments: Chapter 321, as already shown, merely repeals an amendment of 1915 as to charitable corporations. Chapter 320 prescribes the new rates as shown in the table. Chapter 318 merely prescribes that increases during administration shall not be included in the valuation of the estate. This was made necessary by the decision in *Matter of Kempsmith*, 161 Wis. 389. It makes no change in the law, but construes it in conformity with the general theory of inheritance taxation that the tax accrues at death.

Chapter 319 provides that the exemption of \$10,000 to the widow shall "include her statutory and other allowances." (To meet the case of *Smith v. State*, 161 Wis. 558.)

Chapter 322 follows the example of New York, California and the Federal government in taxing transfers at the death of one joint tenant or tenants.

### THE ACT AS AMENDED.

§ 1087. A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporations within the State, for strictly county, town or municipal purposes, and corporations of this State organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization, within the State, in the following cases, except as hereinafter provided:

1. When the transfer is by will or by the intestate laws of this State from any person dying possessed of the property while a resident of the State.

2. When a transfer is by will or intestate law, of property within the State or within its jurisdiction and the decedent was a nonresident of the State at the time of his death.

3. When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within this State, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. Every transfer by deed, grant, bargain, sale or gift, made within six years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall be construed to have been made in contemplation of death within the meaning of this section.

4. Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after the passage of this act; provided, that property or estates which have vested in such persons or corporations before this act shall take effect, shall not be subject to a tax; and provided, further, that contingent interests created by the will of any person who died prior to the passage of this act shall not be taxed.

5. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property, made either before or after the passage of sections 1087—1 to 1087—24, inclusive, such appointment, when made, shall be deemed a transfer taxable under the provisions of sections 1087—1 to 1087—24, inclusive, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of sections 1087—1 to 1087—24, inclusive, shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

6. Whenever any property, real or personal, is held in the joint names of two or more persons, or as tenants by the entirety, or is deposited in banks or other institutions or depositories in the joint names of two or more persons and payable to either or the survivor, upon the death of one of such persons the right of the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, to the immediate ownership or possession and enjoyment of such property shall be deemed a transfer of one-half or other proper fraction thereof taxable under the provisions of this chapter in the same manner as though the property to which such transfer relates belonged to the tenants by

the entirety, joint tenants or joint depositors as tenants in common, and had been bequeathed or devised to the surviving tenant by the entirety, joint tenant or joint tenants, person or persons, by such deceased tenant by the entirety, joint tenant or joint depositor, by will. [This subd. added by chap. 322, L. 1917.]

7. The tax so imposed shall be upon the clear market value of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted.

§ 1087. (Subdivisions 2, 3 and 4 as amended.) Prescribe the rates and exemptions set forth in the foregoing tables (No. 1 and No. 2).

§ 1087 (5). Provides that the tax shall be a lien upon the property transferred, and holds executors and administrators personally liable until it is paid. It provides for receipts which must be produced on final accounting, and there can be no settlement of the account unless such a receipt is produced or a bond has been filed.

§ 1087 (6). Allows a discount of 5% if the tax is paid within one year. After eighteen months 10% interest is charged from the date of accrual, which may be reduced to six in case of unavoidable delay. When a bond is filed the interest is at the rate of 6% from the date of accrual to the date of payment.

§ 1087 (7). Gives executors and administrators power of sale to pay the tax in the same way as to pay debts, requires them to deduct the tax if the property is in money; if not, to collect it from the beneficiary, to whom no delivery may be made until the tax has been paid. If the legacy is charged on real estate the heir must deduct the tax which remains a lien until paid, and may be enforced in the same manner as the legacy or by the district attorney. If the legacy is given for a limited period and is in money the tax shall be deducted from the whole amount, but if in property an application must be made to the court for an apportionment of the tax among the beneficiaries.

§ 1087 (8). Provides for proportionate refund where debts have been proved against the estate after distribution and refunds of erroneous or excess payments.

§ 1087 (9). Provides that remaindermen may elect within one year to defer payment until they come into possession by filing a bond in three times the amount of the tax, with a sworn inventory of the property, and renewing the bond every five years.

§ 1087 (10). Taxes bequests to executors in lieu of commissions in excess of reasonable compensation.

§ 1087 (11). 1. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this State standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the State Treasurer on the transfer thereof. 2. No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a nonresident decedent, nor any foreign or domestic corporation doing business within this State in which a nonresident decedent held stock at his decease, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the tax commission and public administrator at least ten days prior to the said transfer; nor shall such safe deposit company, bank, or other institution, person or persons, nor any foreign or domestic corporation, deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the tax commission or public administrator, personally or by representative, to examine said securities or assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank, or other institu-

tion, person or persons, or such foreign or domestic corporation, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws. The tax commission may issue a certificate authorizing the transfer of any such stock, securities or assets whenever it appears to the satisfaction of the commission that no tax is due thereon. 3. Where stocks, bonds, mortgages, or other securities of corporations organized under the laws of this State or of foreign corporations owning property or doing business in this State shall have been transferred by a nonresident decedent, the tax shall be upon such proportion of the value thereof as the property of such corporation in this State bears to the total property of the corporation issuing such stocks, bonds, mortgages, or other securities. 4. If any stocks, bonds, mortgages, or other securities of a holding company or other corporation are based upon or represent in whole or in part the value of any stocks, bonds, mortgages, or other securities of a Wisconsin corporation or a corporation owning property in this State, either directly or indirectly, the transfer of the stocks, bonds, mortgages, or other securities of such holding company or other corporation shall be subject to the inheritance tax in the proportion which the Wisconsin property bears to the total property represented by or subject to the total stocks, bonds, mortgages, or other securities of which those so transferred are a part. 5. Whenever a tax is due from any resident or nonresident upon the transfer of any property or estate which is partly within and partly without this State, or upon any stocks, bonds, mortgages, or other securities representing any such property partly within and partly without this State, such person shall be entitled to deduct from the value of such property so transferred only a proportion of the debts, expenses of administration and exemptions, equal to the proportion which the Wisconsin property bears to the entire estate of the decedent. 6. The tax commission shall require such reports and information, and shall make such orders, rules, and regulations as it may deem necessary to enable the commission to secure the necessary information from corporations, domestic and foreign, and to ascertain the amount of and collect such tax; and no holding company or other corporation subject to the provisions of this section shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a nonresident decedent based upon or representing in whole or in part, directly or indirectly, the value of Wisconsin property, or stocks, bonds, mortgages, or other securities of a Wisconsin corporation or a corporation owning property in this State, without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of such transfer, except upon order of the proper court or a certificate of the tax commission. 7. Any corporation or holding company violating the provisions of this section shall be liable to the State for the amount of the tax; and for willful violation of its provisions shall forfeit its charter or its license to do business within this State upon complaint of the tax commission, and conviction thereunder.

§ 1087 (12). Gives the court granting letters jurisdiction of all transfer tax matters, and makes regulations for the filing of ancillary letters requiring notice to the public administrator and a full inventory.

§ 1087 (13). Provides for the appointment of appraisers and hearings before them, and for the computation of life estates and remainders by the commissioner of insurance on mortality tables on the basis of 5%. No allowance is made in valuing estates that may be defeated or abridged by a contingency, but a proportionate refund is provided if the contingency happens. In case of contingent remainders the tax is fixed at the lowest possible rate, the ultimate beneficiary being required to pay the difference if it turns out that he is liable to pay a higher rate. Where taxation has been postponed remainders are valued without any deduction for the intermediate life estate. Where an estate for life or years can be divested by the act or omission of the legatee it is taxed as though there were no possibility of such divesting. The section makes the usual provisions for appeal and rehearing before the County Court.

The rest of the statute is concerned with reports of public officers and proceedings for the collection of delinquent taxes.

**AMENDMENT OF 1919 TO SECTION 1087-11 (5), WISCONSIN STATUTES.  
CHAPTER 169, LAWS OF 1919.**

(5) Whenever a tax may be due from the estate or the beneficiaries therein of any resident or nonresident decedent upon the transfer of any property, when the property or estate left by such decedent is partly within and partly without this State, or upon any stocks, bonds, mortgages or other securities representing property or estate partly within and partly without this State, any beneficiary of such estate shall be entitled to deduct only a proportion of his share of the debts, expenses of administration, and of his Wisconsin exemption, equal to the proportion which his interest in the property within the State or within its jurisdiction bears to his entire interest in such estate.

Published May 16, 1919.

**STATEMENT OF WISCONSIN TAX COMMISSION.**

Two important decisions of the Wisconsin Supreme Court have been handed down very recently. These are *State v. Week* and *State v. Ebeling*, not yet reported.

In *Estate of Week* the Supreme Court reversed the County and Circuit Courts and held that the Federal estate tax is not a lawful deduction in determining the net estate subject to the inheritance tax of this State. The same question arose in *State v. Ebeling*, argued at the next assignment, and the former decision was approved.

In *State v. Ebeling* the County Court held that gifts or transfers made by decedent within a year or two prior to death were not made in contemplation of death, as provided by section 1087—1 (3), and this decision was affirmed by the Circuit Court. The Supreme Court reversed the lower courts, and held that our amendment of 1913 (section 1, chapter 643) means precisely what it says, and that every transfer of the kind described is subject to the inheritance tax.

Section 1, chapter 643, 1913, is original with us, and has since been copied verbatim into the statutes of North Dakota and in a modified form into the statutes of Missouri, Indiana and some other States, as well as in the Federal Estate Transfer Law. Our amendment reads as follows:

“Every transfer by deed, grant, bargain, sale or gift, made within six years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall be construed to have been made in contemplation of death within the meaning of this section.”

This amendment was added to section 1087—1 (3) as it originally read in our statutes, and as copied from the New York statutes, and found in substantially all inheritance tax statutes. We think this recent decision of our Supreme Court, construing this section, is of very great importance not only in this State, but in all States which may follow the decision, as it relieves inheritance tax officials of the practically insuperable burden of trying to prove what was in the mind of the decedent in his lifetime.

The above probably covers the situation in this State, including more recent developments. In the pamphlet sent you there is cited all the Wisconsin cases except the last three which are referred to in this letter. In *State ex rel. Kemp Smith v. Widule*, 161 Wis. 389, the court clearly went wrong in its decision; but the error has been cleared up to a considerable extent by the income tax case of *State ex rel. Wisconsin Trust Company v. Widule*, 164 Wis. 56, and *State ex rel. Hickox v. Widule*, 166 Wis. page 113. This latter case illustrates the confusion that the court found itself in as a result of the *Kemp Smith* case, and the explanation is probably found most clearly stated in the concurring opinion of Mr. Justice Siebecker, 166 Wis. page 119.

Very truly yours,

WISCONSIN TAX COMMISSION.

JOHN HARRINGTON,  
Inheritance Tax Counsel.

WISCONSIN FORMS.

STATE OF WISCONSIN.

WISCONSIN TAX COMMISSION.

JOHN HARRINGTON, *Inheritance Tax Counsel.*

IN THE MATTER OF THE ESTATE OF }  
..... } Transfer Certificate.  
Deceased. }

THE WISCONSIN TAX COMMISSION hereby certifies that it has examined the verified petition of ..... of the ..... of ..... , deceased, late a resident of ..... and a nonresident of the State of Wisconsin; and

CONSENT IS HEREBY GIVEN: To the transfer of the following described property upon the books of the respective corporations mentioned, from the name of said deceased to the name of ..... or as he may direct, without incurring any liability to this State by such transfer:

.....  
.....  
.....  
.....

Dated at the Capitol at Madison this ..... day of .....  
WISCONSIN TAX COMMISSION,  
By .....  
Inheritance Tax Counsel.

NONRESIDENT INHERITANCE TAX.—(1) Petition for Special Administration to Adjust Tax — 1087—12, subd. 3.

STATE OF WISCONSIN, COUNTY COURT, DANE COUNTY.

In Re Inheritance or Transfer Tax on Property }  
in the State of Wisconsin, on the Estate of }  
..... }  
late of ..... }  
Deceased. }

To said Court at Madison, Wisconsin, the seat of government, and to Hon. A. G. Zimmerman, Judge of said Court:

The petition of ..... respectfully represents and shows: That he is ..... of the estate (Exr. Adm. Heir or Legatee)

of ..... who died testate (or, intestate) on or about the ..... day of ..... , 191... , being at the time a NONRESIDENT of the State of Wisconsin, but a resident of and domiciled at ..... in the State of .....

That at the time of his decease said decedent was possessed of certain property which appears to be under the jurisdiction of the State of Wisconsin for inheritance tax purposes. That the certificate numbers of all shares of stocks and bonds in corporations having property within the State of Wisconsin, and a description of all other property subject to said tax, together with an estimated full and fair market value of the same at the time of decedent's death, at which value your petitioner consents that the same be appraised, is as follows, to-wit:

No. of Shares of Stock and Amount of Bonds	Name of Corporation	Certificate Numbers	Estimated Value at Date of Death
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

That said decedent was possessed of no other property of any kind, real, personal, or mixed, or any interest in other property at the time of his death, which was situate in or which may be construed as an interest in such property in the State of Wisconsin, of which your petitioner has any knowledge or information.

That said property passes by will (*or*, under the intestate laws) in the proportions and amounts and to the persons and corporations designated, with the relationship of the persons, as follows:

Name	Residence	Relationship	Amount in Wisconsin Property
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Note—Indicate life estates, giving age of life beneficiary at date of decedent's demise.

That the total appraised value of decedent's estate is the sum of \$.....

That the amount of debts and expenses of administration (not including trustee's commissions nor inheritance taxes paid) is the sum of \$.....

That the principal administration of said estate.. is now pending in the ..... Court for the County of ..... State of ..... That no administration has been had in the State of Wisconsin and that no reason or necessity exists for ancillary or special administration on said estate in Wisconsin except for the purpose of the adjustment, determination and payment of the inheritance or transfer tax due said State thereon.

WHEREFORE, your petitioner prays that summary administration, ancillary or special, be had in said court, at the seat of government of the State of Wisconsin, solely for the purpose of adjustment, determination and payment of the inheritance or transfer tax due the State of Wisconsin on the property of said decedent hereinbefore described, and that J. C. HARPER, the Public Administrator of said Dane County, be appointed SPECIAL ADMINISTRATOR of said estate for the purpose of such adjustment, determination and payment of the inheritance or transfer tax due to the State of Wisconsin on said estate, it being understood that there will be no fees charged against said estate for such administration. (Provided, however, where property subject to the jurisdiction of this State is omitted and supplementary administration is afterwards required, a charge of \$5.00 to cover the expense in such application may be made.)

And your petitioner, for himself and on behalf of all the heirs, legatees and persons interested, hereby expressly waives all notices which otherwise would by law be required to be given and consents that said court may determine the inheritance or transfer tax on said property forthwith on the presentation and filing of this petition, it being understood, however, that there shall be a just and fair appraisal, and that said tax shall be determined at the lowest lawful rate applicable thereto under the laws of the State of Wisconsin.

Dated ....., 191...

Petitioner.

STATE OF ..... }  
County of ..... } ss.

....., the above named petitioner, being duly sworn, on oath, says that he has heard read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true to his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

.....

Subscribed and sworn to before me this.....  
day of ..... , 191...  
.....  
Notary Public, County of .....  
State of .....

Sec. 1087—15 and 1087—18, Subsec. 7—Notice of Final Account and to Determine Inheritance Tax—Prescribed by Tax Commission.

COUNTY COURT—..... COUNTY, WISCONSIN—IN PROBATE  
In the Matter of the ..... of }  
....., Deceased. }

NOTICE IS HEREBY GIVEN, that at a ..... term of the County Court to be held in and for said county at the court house in the city of ..... in said county on the ..... Tuesday (being the ..... day) of ..... , A. D. 19... , at the opening of court on that day the following matter will be heard and considered:

The application of ..... , executor (or administrator) of the will (or estate) of ..... , deceased, lato of ..... in said county, for the examination and allowance of his final account, and for the assignment of the residue of the estate of said deceased to such persons as are by law entitled thereto; and for the determination and adjudication of the inheritance tax, if any, payable in said estate.

Dated ..... , A. D. 191...

BY THE COURT:

.....  
County Judge.

INFORMATION REQUIRED BY TAX COMMISSION AND PUBLIC ADMINISTRATOR.

1. Name and residence of deceased .....
2. Date of death .....
3. Executor or administrator ..... P. O. ....
4. Attorney for Exr. or Adm'r. .... P. O. ....
5. Appraised value of estate, Real \$..... Personal \$..... Total \$.....
6. Estimated debts \$.... Funeral and administration \$.... Total \$.....
7. Amount of life insurance, if any, \$.....
8. Net estate to be distributed ..... \$.....
9. Is the property appraised fully at clear market value? .....
10. Was interest to date of death on notes, mortgages, etc., included? .....
11. Is any property of decedent not included in inventory known to exist? ....  
Amount \$.....
12. Did decedent convey any property before death to relatives or others without full consideration? .....
13. Gives the names and ages of life tenants, if any .....
14. State the names of the heirs or legatees, relationship to deceased, if any, estimated distributive share to each, exemption to which each is entitled, rate, and amount of tax due from each

Names of Heirs or Legatees	Relationship if any	Distributive shares	Exemptions	Rate of tax	Amount of tax
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
Total,.....	.....	.....	.....	.....	\$.....

.....  
Attorney for

Dated ..... , A. D. 191...



STATE OF WISCONSIN,

} ss.  
County.

..... being first duly sworn, says that on the ..... day of ....., 191..., he deposited in the post office at ....., Wisconsin, a true copy of the within notice, securely enclosed in an envelope, the postage prepaid thereon, to each of the following named at the addresses stated respectively, to-wit:....., Public Administrator, ....., Wisconsin; and Wisconsin Tax Commission, Madison, Wisconsin, one copy of said notice to each.

Subscribed and sworn to before me this ..... day of ....., 191...

.....  
Notary Public, Wisconsin.

Sec. 1087—15, subsec. 10.—Order Determining Inheritance Tax—Prescribed by Tax Commission.

COUNTY COURT—..... COUNTY, WISCONSIN—IN PROBATE

In the Matter of the ..... of }  
....., Deceased. }

At the ..... term held ..... A. D. 19...

The matter of determining the cash value of said estate and the amount of inheritance tax to which the same is liable coming on to be heard pursuant to an order entered herein on the ..... day of ....., 19...; and it appearing that due notice of said hearing was given as provided by law, and that notice in writing of such hearing was mailed to the public administrator of said county and to the Wisconsin Tax Commission not less than twenty days before such hearing; and due proof of mailing said notices having been filed herein;

And ....., public administrator, appearing for said county and for the State of Wisconsin, and other appearances being as follows:

.....  
And it appearing that the final account of ....., executor (or administrator) was duly filed herein; and the court (having appointed ..... as third appraiser to represent the county and the State in determining the value of said estate, and) having taken testimony and considered the inventory and the report of the appraisers (and of said third appraiser), and having heard all parties desiring a hearing, and upon the whole record herein, and being fully advised:

THE COURT FINDS AND DETERMINES THAT said deceased died on the ..... day of ....., 191...;

THAT the gross value of the property and estate of said deceased, both real and personal, transferred herein, is as follows:

Cash .....	\$.....
Notes and securities.....	\$.....
Corporate stocks and bonds.....	\$.....
Other personal property.....	\$.....
Real estate .....	\$.....
Gross value of estate.....	\$.....

THAT the following deductions are allowed:

Debts .....	\$.....
Funeral expenses .....	\$.....
Expenses of administration .....	\$.....
Total deductions .....	\$.....

Clear market value..... \$.....

THAT the names of the heirs, legatees and devisees, relationship to deceased, distributive share of each, exemption to which each is entitled, rate, and amount of tax due from each, are as follows:

Names of Heirs or Legatees	Relationship if any	Distributive shares	Exemptions	Rate of tax	Amount of tax
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
Total,.....	.....	.....	.....	.....	\$.....

WHEREFORE IT IS ORDERED that the executor (or administrator) be and he is hereby authorized and directed to pay and deliver forthwith to the county treasurer the sum of ..... Dollars as and for inheritance tax to which said heirs, legatees or devisees are liable, and to take proper receipt or receipts therefor, and to charge the same to the respective shares as taxed herein.

IT IS FURTHER ORDERED that a discount of five per centum of said tax be allowed and deducted therefrom by the county treasurer, provided the same is paid within one year from the date of death of said deceased; and that if such tax is not paid within eighteen months from said date of death, interest shall be charged and collected thereon at the rate of ten per centum per annum from said date of death.

IT IS FURTHER ORDERED that a copy of this order be forthwith delivered or mailed to each the county treasurer, the State Treasurer, and the Wisconsin Tax Commission, and due proof of such delivery or mailing be filed herein.

Dated ....., 191...

BY THE COURT:

.....  
Judge.

STATE OF WISCONSIN,

} ss.

..... County.

..... being first duly sworn, says that on the ..... day of ....., 191..., he deposited in the post office at ....., Wisconsin, a true copy of the within order, securely enclosed in an envelope, the postage prepaid thereon, to each of the following named at the addresses stated respectively, to-wit: ..... County Treasurer, ....., Wisconsin; State Treasurer, Madison, Wisconsin; and Wisconsin Tax Commission, Madison, Wisconsin, one copy of said order to each.

Subscribed and sworn to before me this ..... day of ....., 191...

.....  
Notary Public, Wisconsin.

## WYOMING.

Taxes property of nonresidents within the State, including stock in domestic corporations.

TABLE OF RATES AND EXEMPTIONS

CLASS OR RELATIONSHIP	Amount of exemption	Rate of tax
Father, mother, husband, wife, child, brother, sister, son-in-law, daughter-in-law, adopted or mutually acknowledged child or lawful lineal descendant.	\$10,000 and any life estate where the remainder goes to collaterals or strangers	2% on all in excess of exemption.
All others . . . . .	\$500	5% on all above exemption.

## COMPILED STATUTES 1910, CHAPTER 169.

§ 2455. All property, real, personal and mixed, which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same, while a resident of this State, or if decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the State, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed.

The rest of the section prescribes the rates and exemptions as shown in the foregoing table.

§ 2456. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother, sister, the widow of the son, husband of the daughter, or a lineal descendant during the life or for a term of years and remainder to the collateral heir of the descendant, or the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax prescribed by this chapter on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon shall be and remain a lien on said property until the same is paid: Provided, That the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession or enjoyment of such property, then, in that case said person or persons or body politic or corporate shall give a bond to the people of the State of Wyoming, in a penalty three times the amount of the tax arising upon such estate with such sureties as the district judge may approve, conditioned for the payment of the said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond

shall be filed in the office of the county clerk of the proper county; Provided, further, That such person shall make a full, verified return of said property to said district judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same each five years.

§ 2475. Makes taxes due at death, allows a discount of 5% if paid within six months, after that interest charged from accrual at 6%, and if not paid within one year executors or administrators must give a bond.

§ 2458. Requires executors and administrators to deduct the tax or collect it from the beneficiary, to whom delivery must not be made unless the tax is paid. Where the legacy is charged on real estate the tax must be deducted, is a lien and may be enforced in the same manner as the legacy. Where property is given for a limited period application to the court must be made to apportion the tax among the beneficiaries, unless the legacy is in money, when it must be deducted from the whole amount.

§ 2459. Gives power of sale to pay the tax in the same way as to pay debts.

§ 2460. Provides for receipts which must be produced on final accounting.

§ 2461. Requires administrators to go to the county treasurer with regard to the transfer of any real estate believed to be taxable.

§ 2462. Provides for a proportionate refund in case debts are proved against the estate after distribution.

§ 2463. Requires payment of the tax before any transfer of stock by a foreign executor or administrator, and makes the corporation making the transfer liable for the tax in case it is not so paid.

§ 2464. Provides for refund of taxes erroneously paid provided the application for refund is made within two years of such payment.

The rest of the statute provides the usual proceedings for appraisal, assessment, appeal and the collection of delinquent taxes.

## TWO INDICES

---

**SPECIAL INDEX** to U. S. Statutes and Treasury Department Rules  
and Regulations. See page 1071.

**GENERAL INDEX** of the Complete Work. See page 1083.



# SPECIAL INDEX

## UNITED STATES STATUTE AND TREASURY DEPARTMENT RULES AND REGULATIONS.

For General Index, see page 1083.

### A.

	ARTICLE	PAGE
Act of 1898.....		552
Act of 1916.....		569
Amendment of March 3, 1917.....		576
Amendment of October 3, 1917.....		578
Act of 1919.....		579
Abatement, claim for:		
Limitation of time to file.....	109	657
Proof in support of.....	107	656
When may be made.....	106	656
Accord and satisfaction of past claim — not sufficient consideration to constitute transfer a "sale".	22	603
Accountants, fees of — deductibility.....	44	617
Accounts, valuation of.....	15	592
Administration expenses, definition of.....	41	615
Advancements, not necessarily taxable.....	23	604
Annuity:		
Included in gross estate.....	12	589
Valuation of .....	20	589
Annuity insurance, valuation of.....	36	611
Appraisal of household and personal effects.....	16, 17, 18, 19	596
Appraisers:		
Experts required .....	19	578
Fees of — deductibility .....	44	617
Attorneys' fees, when deductible.....	43	616
Attorneys, necessary authorization.....	87	644
Auction sales, how far accepted.....	15	592
Auctioneers, fees of — deductibility.....	44	617

	ARTICLE	PAGE
<b>B.</b>		
Bank deposits, amount included in gross estate.....	15	592
Bare legal title, not included in gross estate.....	12	589
Beneficiary, under insurance policies:		
Who is .....	34	611
When to give 60-day notice.....	70	634
Bequests:		
Conditional — when deductible.....	56	626
Public or charitable — deductibility.....	53	623
Public or charitable — estates which may deduct	57	626
To executors — not a basis for deduction.....	42	615
Public or charitable — proof required.....	55	625
Brokers, fees of — deductibility.....	44	617
Burial expenses, deductibility of.....	40	614
Burial lot, deductibility of charge for.....	40	615
Business, valuation of interest in.....	15	592

<b>C.</b>		
Casualty, meaning of.....	48	619
Cemetery lot, inclusion in gross estate.....	13	590
Charitable corporations, what are.....	54	624
Checks, uncertified — effect of failure to pay.....	90	646
Citizenship not test of residence.....	4	582
Civil War tax.....		551
Claims, valuation of.....	15	592
Claims against estate:		
Decedent's personal obligations deductible.....	45	617
Obligations contracted by executor not deducti-		
ble. . . . .	45	618
Clerk hire, deductibility.....	44	617
Close corporation, valuation of stock.....	15	592
Commissions of executors, rules for deduction.....	42	615
Commissions of trustees, not deductible.....	42	615
Computation of tax, how made.....	6	582
Compromise — power of Commissioner:		
Extends to any civil or criminal case.....	112	659
Limitation of .....	112	659
Requires advice and consent of Secretary.....	112	659
Constitutionality doubtful .....		553
Construction by State courts.....		556
Expert opinion .....		565
Consent decrees, effect of.....	39	614
Contemplation of death, transfers made in — nature		
of. . . . .	23	603
Copyrights, valuation of.....	15	595



	ARTICLE	PAGE
Coupons, inclusion in gross estate.....	13	591
Court costs, deductibility.....	44	617
Curtesy, included in gross estate.....	21	602
Crops, valuation of.....	15	596

**D.**

Death, cause of action for — not included in gross estate. . . . .	12	589
Death benefits, taxable as insurance.....	32	610
Deductions:		
Effect of decision of local court.....	39	614
General provisions . . . . .	38	613
Dependent, of decedent — who is.....	49	619
Dependents, support of — rules governing deductibility. . . . .	49	619
Depreciation, in value of assets after death — not deductible. . . . .	14	591
Disease, loss from — deductible.....	48	619
Distrain, collection of tax by.....	116	662
Dividends:		
Not included in gross estate unless declared....	13	590
When to be included in value of stock.....	13	590
Domestic corporations, stock in part of estate of nonresident. . . . .	60	627
Domestic insurance company, insurance in part of estate of nonresident.....	60	627
Domicile, definition of.....	5	582
Donees, when to give 60-day notice.....	70, 73	634
Dower, included in gross estate.....	21	602

**E.**

Educational corporations, what are.....	54	624
Entirety, estates by — inclusion in gross estate....	27	606
Escheated property, transfer taxable.....	1	581
Estate tax, character of — not a property or legacy tax. . . . .	1	581
Excess tax.		
Executor to be notified of.....	95	649
How determined . . . . .	95	649
Executor:		
Duty to file return.....	80	641
Duty to furnish supplemental data.....	83	642
Duty to keep records.....	117	662
Duty to produce records and papers.....	105	655

Executor — <i>Continued.</i>	ARTICLE	PAGE
Personal liability of.....	113	660
Required to pay tax.....	113	660
Term includes administrator.....	—	579
Exemption, specific — in case of resident estates...	58	626
Extension, of time to pay tax — when granted.....	93	648

## F.

Fiduciaries, when to give 60-day notice.....	70	634
Fires, loss from deductible.....	48	619
Forms:		
Sixty-day notice — resident estate.....		665
Sixty-day notice — insurance companies — resi- dent. . . . .		667
Sixty-day notice — insurance companies — non- resident. . . . .		668
Claim for military exemption.....		669
Application for release from lien.....		670
Return by executor — resident.....		672
Return by executor — nonresident.....		683
Fraud, in return — effect of.....	90	646
Funeral expenses, deductibility.....	40	614
Furniture, valuation of.....	15	592

## G.

Good will, valuation of.....	15	593
Gross estate:		
Includes only actual, beneficial interests.....	12	589
Real property included only when situated in United States . . . . .	13	590

## H.

History and development of law.....		550
Household goods, appraisal of.....	16, 17, 18	596
Husband or wife, when to give 60-day notice.....	70	634

## I.

Individual insurance, not taxable where death oc- curred prior to Feb. 25, 1919.....	35	611
Insurance:		
Assignment by decedent — not taxable where he ceases to pay premiums.....	32	610
Foreign companies — not considered in deter- mining gross estates of nonresidents.....	60	627
Payable to estate — character of.....	33	610

Insurance — *Continued.*

	ARTICLE	PAGE
Payable to estate — the whole included in gross estate. . . . .	32	610
Payable to individuals — amount in excess of \$40,000 included in gross estate. . . . .	32	610
Taken out as security — taxable where decedent pays premiums . . . . .	32	610
Insurance companies, when to give 60-day notice. . .	71, 73	635
Insurance premiums, payment of by decedent test of taxability. . . . .	32	610
Interest:		
On bonds and notes — inclusion in gross estate. . . . .	13	590
On notes — how computed. . . . .	15	594
On unpaid tax —		
Not affected by claim for abatement. . . . .	108	657
On excess tax. . . . .	96	650
On original tax. . . . .	94	648
Where liability accrued under prior statutes. . .	120	663
Inventory, of nonresident estate — power to require. . .	84	643
Investigation of estates. . . . .	79	640

## J.

Jewelry, appraisal of. . . . .	18	598
Joint interests:		
Character of . . . . .	27	606
What interest included in. . . . .	28	607
Judgments:		
Of local court — effect on deductions. . . . .	39	614
Valuation of . . . . .	15	595

## L.

Lien:		
For excess tax. . . . .	99	652
General provisions . . . . .	99	652
Release of . . . . .	100	652
When divested by sale. . . . .	101	653
Life estate:		
For life of decedent — not included in gross estate. . . . .	12	589
For life of third person — included in gross estate. . . . .	12	589
Valuation of . . . . .	20	578
Limitations, statute of — inclusion of notes barred by. . . . .	13	590
Losses, when deductible. . . . .	48	619

<b>M.</b>	<b>ARTICLE</b>	<b>PAGE</b>
Mausoleum, deductibility of charge for.....	40	615
Military exemption:		
Proof of .....	10	587
When granted .....	9	587
Monument, deductibility of charge for.....	40	615
Mortgages:		
On property situated in United States—deductible. . . . .	47	618
On property not situated in United States—when deductible .....	47	618
<b>N.</b>		
Net estate:		
Deductions prior to Revenue Act of 1918.....	37	612
Deductions under Revenue Act of 1918.....	37	612
Nonresident, definition of.....	4	582
Nonresident estates:		
Bonds situated in United States part of gross estate. . . . .	60	627
Deductions —		
Claim for expenses — not to exceed 10 per cent of value of property in United States. . . . .	61	628
Claim for expenses — immaterial where incurred. . . . .	61	628
Property previously taxed — rules for deduction. . . . .	62	629
Property previously taxed — full amount deductible. . . . .	61	628
Public or charitable gifts — full amount deductible. . . . .	61	628
Public or charitable gifts — must be to domestic corporation or for domestic use.	63	630
Determination of net estate.....	64	631
Insurance in domestic company — part of gross estate. . . . .	60	627
Lien upon gross estate.....	99	652
Moneys due by domestic creditors — part of gross estate .....	60	627
Moneys on deposit with domestic banks — part of gross estate.....	60	627
Net estate — how determined.....	59	627
No specific exemption.....	58	626
Part of gross estate not subject to tax.....	59	627

**Nonresident estates — *Continued.***

	ARTICLE	PAGE
Property included in gross estate.....	59	627
Requirement of information concerning.....	84	643
Return by .....	88	645
Situs of property — how determined.....	60	627
Situs of property transferred by decedent — how determined .....	60	627
Stock in domestic corporations — part of gross estate. ....	60	627
Tax confined to property situated in United States. ....	59	627
When may deduct public or charitable bequests.	63	630
When personal property included in gross estate	60	627
Notes, valuation of.....	15	594
Notice, 60-day:		
By transfer agents.....	74	637
Executor to file.....	67	633
In case of nonresident estates.....	73	636
Should be given though military exemption claimed. . . . .	72	636
Time for filing.....	67, 73	636
To be filed in duplicate.....	66	632

**P.**

Patents, valuation of.....	15	595
Payment of claim allowed, how made.....	111	658
Payment of tax:		
By Liberty bonds.....	91	647
By uncertified check.....	91	647
Extension of time for.....	93	648
Proceedings to enforce.....	116	662
Receipt for .....	90	646
Return must be filed.....	90	646
Shown due by return — effect of.....	90	646
Time of .....	90	646
Penalties:		
For failure to exhibit property.....	105	655
For failure to exhibit records.....	105	655
For failure to file notice or return.....	104	655
For false or fraudulent return or notice.....	103	655
Nature of .....	102	655
Personal effects:		
Appraisal of .....	16, 17, 18	596
Valuation of .....	15	592

	ARTICLE	PAGE
<b>Personal liability:</b>		
of executor .....	113	660
Of insurance beneficiary .....	101	653
Of transferee or trustee .....	101	653
<b>Personal property:</b>		
Estate of resident — all included in gross estate.	13	590
Estate of nonresident — included in gross estate only when situated in United States .....	13	590
<b>Persons in possession of property, when to file 60- day notice .....</b>	68, 69, 70, 73	633
<b>Power of appointment, property passing under:</b>		
General rule .....	30	608
Rule where death occurred prior to February 25, 1919 .....	31	609
<b>Privilege:</b>		
Disclosure of information to persons having in- terest. . . . .	86	644
Returns and other records confidential .....	85	643
<b>Property previously taxed, rules for deductibility...</b>	62	629
<b>Property transferred by decedent:</b>		
Date of transfer determines subject of valuation	26	605
To be valued as of date of death .....	26	605
<b>R.</b>		
<b>Rates:</b>		
Under act of 1898 .....		552
Under act of 1916 .....		567
Under amendment of 1917, March 3 .....		568
Additional tax (Oct. 3, 1917) .....		568
Under act of 1919 .....		580
Tabulation of all rates .....		569
<b>Real property, situated outside United States — not included in gross estate .....</b>	13	590
<b>Records, power to compel production .....</b>	105	655
<b>Refund, claim for:</b>		
In case of military exemption .....	11	588
Proof in support of .....	110	657
<b>Reimbursement:</b>		
For tax payment — right to .....	98	651
Not enforceable by bureau .....	98	651
<b>Relatives, transfers to — must be returned .....</b>	23	603
<b>Religious corporations, what are .....</b>	54	624

Remainders:	ARTICLE	PAGE
Contingent — when not included in gross estate.	12	589
Valuation of .....	20	598
Vested — included in gross estate.....	12	589
Remit, power of commissioner.....	112	659
Rent, inclusion in gross estate.....	13	590
Resident, test of is domicile.....	5	582
Return:		
By whom required.....	88	645
Executor to file.....	80	651
Extension of time to file.....	81	641
Form of .....	82	642
Time for filing.....	88	645
When required .....	77	639
Revolutionary War tax.....		551

## S.

Sales:		
Character of, necessary consideration.....	22	603
Not taxable .....	22	603
Savings banks, when to give 60-day notice.....	70	634
Scientific corporations, what are.....	54	624
Scope of tax, imposed upon both residents and non-residents. ....	4	582
Security, upon release of lien.....	100	652
Shipwreck, loss from — deductible.....	48	619
Silverware, appraisal of.....	18	597
Spanish War tax.....		552
Statutes:		
Act of 1898.....		552
Act of 1916.....		569
Amendment, March 3, 1917.....		576
Amendment, Oct. 3, 1917.....		578
Act of 1919.....		579
Stocks and bonds, valuation of.....	15	592
Storage, deductibility of charge for.....	44	617
Storms, loss from — deductible.....	48	619
Suit:		
To enforce personable liability — collection of tax by .....	116	662
To subject property — collection of tax by....	116	662
Supplemental data, duty of executor to furnish....	83	642
Surrogate's fees, deductibility.....	44	617

<b>T.</b>	<b>ARTICLE</b>	<b>PAGE</b>
Tax liability, manner of determining.....	<b>6</b>	<b>582</b>
Taxes:		
Succession, legacy or inheritance — not deductible. . . . .	<b>46</b>	<b>618</b>
Upon income accruing after decedent's death — not deductible . . . . .	<b>46</b>	<b>618</b>
Upon income accruing in decedent's lifetime — deductible. . . . .	<b>46</b>	<b>618</b>
Upon personal property — when deductible....	<b>46</b>	<b>618</b>
Upon real property — to be apportioned.....	<b>46</b>	<b>618</b>
Testimony:		
May be taken by revenue agent or inspector....	<b>114</b>	<b>661</b>
Power of Commissioner to take.....	<b>114</b>	<b>661</b>
Requirement by subpoena.....	<b>115</b>	<b>661</b>
Thefts, loss from — deductible.....	<b>48</b>	<b>619</b>
Tombstone, deductibility of charge for.....	<b>40</b>	<b>615</b>
Trade-marks, valuation of.....	<b>15</b>	<b>592</b>
Transfer, when taxable.....	<b>2</b>	<b>581</b>
Transfer agents, when to give 60-day notice — importance of . . . . .	<b>74</b>	<b>637</b>
Transfers in lifetime of decedent:		
In contemplation of death —		
Nature of . . . . .	<b>23</b>	<b>603</b>
Transfers within two years of death — presumptively taxable . . . . .	<b>23</b>	<b>603</b>
Intended to take effect at or after death —		
Contract by grantee to pay annuity.....	<b>24</b>	<b>604</b>
Payment of income to third person.....	<b>24</b>	<b>604</b>
Reservation of annuity.....	<b>24</b>	<b>604</b>
Reservation of income to grantor.....	<b>24</b>	<b>604</b>
Reservation of portion of income.....	<b>24</b>	<b>604</b>
Reservation of power of management of property. . . . .	<b>25</b>	<b>605</b>
When taxable . . . . .	<b>22</b>	<b>603</b>
Trust:		
Property held in — not included in gross estate.	<b>12</b>	<b>589</b>
Transfer by way of — taxable.....	<b>22</b>	<b>603</b>
Trustees, when to give 60-day notice.....	<b>70</b>	<b>634</b>
<b>V.</b>		
Valuation of property, rules for.....	<b>15</b>	<b>592</b>
Value:		
General rules for determining.....	<b>14</b>	<b>591</b>
Insurance — actual proceeds . . . . .	<b>36</b>	<b>611</b>



# GENERAL INDEX

---

**For U. S. Statutes and Treasury Department Rules and Regulations,  
see Special Index, page 1071.**



# GENERAL INDEX

---

For Special Index to U. S. Statute and Treasury Department Rules and Regulations, see page 1071.

---

## A.

Account	PAGE
Valuation of — Federal act.....	592
Account books	
As evidence .....	454
Accrual	
Of tax .....	28, 38, 39
At date of gift.....	123
Accrued interest	
Set forth in inventory.....	425
Active securities .....	343
Actuaries	
Combined table of mortality.....	291, 292
Adequate consideration.....	151
Adjournment	
No new notice required by appraiser.....	446
Administration	
Affidavit on applying for; form.....	808
Expenses a deduction.....	380
Gains or losses during.....	36
Inventory of expenses.....	428
Administrator	
Commissions. ....	386-428
Duty of, New York Statute, § 224.....	742
Personal liability of.....	525
Admissions	
In inventory competent against executor.....	450
Adopted child .....	226
Burden on to show adoption.....	431

	PAGE
<b>Adopted statutes</b> .....	65
<b>Affidavit</b>	
Appraiser may act upon.....	449
As admissions by administrator.....	450
Form, for executor.....	417
Form, for appraisal.....	431
Must show facts, not conclusions.....	450
Of expert, as to real estate.....	339
Supplemental, may be required.....	449
When prepared by attorney.....	452
<b>Age</b>	
As affecting contemplation of death.....	119
<b>Agent</b>	
Delivery of gift to.....	106
<b>Agreement</b>	
Compromise, among heirs.....	93
To make a will.....	87
With the State.....	528
<b>Alabama</b>	
No inheritance tax.....	811
<b>Alaska</b>	
No inheritance tax.....	811
<b>Aliens</b> .....	78
Real estate of.....	248
<b>Amendments</b>	
Generally. . . . .	68
List of, New York Statute.....	686
To New York Statute, 1917, 1918, 1919.....	713
<b>American experience</b>	
Tables of mortality.....	293, 294, 297
<b>Amount</b>	
Of property, classification by.....	45
<b>Annuity</b>	
Charged on life estate.....	257
Computation of value.....	289
Payment of tax on.....	257, 258
<b>Ante-nuptial agreements</b> .....	91

<b>Appeal</b>	PAGE
Costs. . . . .	506
Does not lie from order remitting report. . . . .	475
Form of notice. . . . .	485
Grounds must be stated on appeal to surrogate. . . . .	483
Notice of appeal. . . . .	483
Order appealed from. . . . .	503
Papers. . . . .	505
Proceedings on . . . . .	466
Service of notice. . . . .	505
Status of executor. . . . .	501
Stipulation, form for. . . . .	505
To Appellate Division, form. . . . .	794
To Court of Appeals. . . . .	507
To Supreme Court of the United States. . . . .	508
To surrogate, form. . . . .	793
To surrogate, hearings on. . . . .	483
To surrogate, New York Statute, § 232. . . . .	754
Who may appeal. . . . .	501
<b>Appellate courts</b>	
Appeals to . . . . .	500
<b>Appellate Division</b>	
Appeals to . . . . .	499
Notice of appeal. . . . .	500
<b>Appendix . . . . .</b>	769
<b>Appointment</b>	
Of appraiser . . . . .	440
<b>Appointment, power of</b>	
See power of appointment. . . . .	173
Statutes affecting . . . . .	534
<b>Apportionment</b>	
Of corporate property. . . . .	353
<b>Appraisal</b>	
Ends with death or removal of appraiser. . . . .	448
Petition for, form . . . . .	418, 431
Under Federal act. . . . .	596
<b>Appraiser</b>	
Appointment. . . . .	440
Appointment of, New York Statute, § 229. . . . .	747
Cannot remit penalty. . . . .	520
Fees and expenses. . . . .	747

**Appraiser — Continued.**

PAGE

Forms of report.....	461
Jurisdiction. . . . .	443
May act on affidavit.....	450
May not write legal opinions.....	442
Notice of hearing before; form.....	580
Oath; form of.....	789
Order appointing; form.....	789
Powers and duties.....	441
Proceedings before . . . . .	440
Proceedings by, New York Statute, § 230.....	750
Removal. . . . .	440
Subpoena issued by; form.....	790
Suspending taxation . . . . .	459
What his report must contain.....	457
What it must show.....	459
When report remitted.....	474

**Arizona**

Address of tax collector.....	771
Interest, discount, penalty.....	537
Mortality tables . . . . .	285
Rates and exemptions.....	811
Statute. . . . .	811

**Arkansas**

Address of tax collector.....	771
Interest, discount, penalty.....	537
Mortality tables . . . . .	285
Rates and exemptions.....	816
Statute. . . . .	817
Theory of the tax.....	9

**Army officer**

Domicile of . . . . .	219
-----------------------	-----

**Art**

Works of . . . . .	426
--------------------	-----

<b>Art gallery exempted.....</b>	<b>241</b>
----------------------------------	------------

**Assessed value**

Of real estate.....	337
Should be shown in inventory.....	423

<b>Assessments . . . . .</b>	<b>385</b>
------------------------------	------------

<b>Assessment of tax</b>	PAGE
Effect of decree.....	481
Forms of notice.....	792
Forms of order.....	475, 792
Judge acts as taxing officer.....	471
Remitting report .....	474
The taxing order.....	473
<b>Assets</b>	
Pro rating .....	392
Marshaling. . . . .	398
<b>Assignment</b>	
By legatee .....	248
<b>Aunt</b> . . . . .	103
<b>B.</b>	
<b>Bad faith</b>	
Motion to modify decree denied.....	514
<b>Bank</b>	
Notice by, form of.....	809
<b>Bank deposits</b> .....	111, 592
Set forth in inventory.....	424
Situs. . . . .	328
<b>Bavaria</b>	
Treaty with .....	80
<b>Beneficiaries</b>	
As to domicile.....	223
Interest of in inventory.....	430
Personal liability .....	527
Testimony by .....	431
<b>Bid Price</b>	
As to stocks.....	347
<b>Bonds</b>	
Liability on mortgage bond.....	376
Situs. . . . .	313
Value. . . . .	352
U. S. Government bonds taxable.....	21
<b>Books in inventory</b> .....	426
Of account as evidence.....	454
Of corporation .....	454

<b>Book value</b>	PAGE
Of stock .....	349-350
<b>Brokers</b>	
Commissions. ....	428
<b>Brother.</b> ....	102
<b>Burden of proof</b>	
As to adoption.....	451
As to consideration.....	156
As to domicile.....	220
As to exemptions.....	238
As to gifts.....	104
As to gifts <i>inter vivos</i> .....	451
As to residence — N. Y. Statute, § 243.....	766
On beneficiary to prove exemption.....	451
On State to show taxable assets.....	417
<i>Prima facie</i> case sufficient.....	450
Rests on the Comptroller.....	451
Where on executors.....	451
<b>Burial expenses</b> .....	379, 614

## C.

<b>California</b>	
Action to quiet title.....	246
Address of tax collector.....	771
Adequate consideration .....	154
Administrators and executors — power of sale.....	830
Burden of proof.....	156
Contemplation of death.....	119, 825
Delivery of gift.....	109, 124
Form, for transfer of nonresident securities.....	839
Interest, discount, penalty.....	537
Joint estates .....	198, 825
Lien. ....	826
Limitations. ....	72, 517
Mandamus. ....	522
Mistake of fact.....	509
Mortality tables .....	285
Prior statutes .....	838
Pro rating debts.....	393
Rates, table of L. 1911.....	821
Rates, table of L. 1913.....	822
Rates, table of L. 1915-1917.....	823
Repeal. ....	70



<b>California — <i>Continued.</i></b>	PAGE
Situs of stocks.....	318
Statute, L. 1917.....	824
Theory of tax .....	9
<b>Capital</b>	
Invested in business.....	699
<b>Carlisle table of mortality.....</b>	295, 296
<b>Cash on hand</b>	
Set forth in inventory.....	424
<b>Cattle . . . . .</b>	312
<b>Causa mortis gifts.....</b>	114
<b>Cemetery lot</b>	
Cost of deducted .....	379, 590
Inventory of cost.....	427
<b>Certificates of stock</b>	
Situs. . . . .	318
<b>Charities</b>	
Exemption of bequest to.....	233
<b>Charitable corporation</b>	
Burden of proof to show exemption.....	451
Notice to .....	448
Under Federal act.....	624
<b>Charitable exemptions</b>	
N. Y. Statute, § 221.....	736
<b>Child</b>	
Adopted. . . . .	226
Illegitimate. . . . .	226
Mutually acknowledged .....	227
Rights of in intestacy.....	101
<b>Churches</b>	
Exempt. . . . .	241
<b>Civil law</b>	
Rights of children.....	5
<b>Civil law transfers</b>	
Gains in foreign country.....	208
Gains in this country.....	208
Where not taxable.....	207
Where taxable .....	207

<b>Civil service laws</b>	PAGE
Not applicable to appraisers.....	440
<b>Classifications</b> . . . . .	41
By domicile . . . . .	43
By relationship . . . . .	44
By amount of property.....	45
By kind of property.....	48
Tangible and intangible.....	49
By payment of other taxes.....	52
By kind of transfer.....	52
<b>Closely held stock</b> .....	346
<b>Close cororation</b> . . . . .	346
<b>Code Napoleon</b> . . . . .	5
<b>Collaterals</b> . . . . .	101
<b>Colorado</b>	
Address of tax collector.....	771
Interest, discount, penalty.....	537
Mortality tables . . . . .	285
Prior statutes . . . . .	843
Rates and exemptions.....	840
Statute. . . . .	840
Theory of the tax.....	9
<b>Commercial paper</b>	
Situs. . . . .	313
<b>Commissions</b>	
Inventory of . . . . .	428
On sale of real estate.....	390
To brokers . . . . .	390
To executors . . . . .	386, 615
To trustees . . . . .	388
<b>Common law</b>	
Husband's marital right.....	189
Transfers by operation of.....	185
Powers of appointment.....	173
<b>Composition of tax</b> .....	528
Form for . . . . .	804
<b>Comptroller</b>	
Burden of proof upon.....	450, 451
Power to inspect safe deposit box.....	412
Where mandamus lies against.....	521

	PAGE
<b>Compromise agreements</b> .....	93
<b>Computations</b> .....	283
Actuaries combined table, 5 per cent.....	291
Actuaries combined table, 6 per cent.....	292
American experience mortality table.....	297
American experience table, 4 per cent.....	293
American experience table, 5 per cent.....	294
Application to inheritance taxation.....	298
Carlisle table, 5 per cent.....	295
Carlisle table, 6 per cent.....	296
Chance of death.....	288
Compound interest rule.....	286
How to use the tables.....	298
Key table .....	285
Law of discount.....	287
Mortality tables and interest rate.....	283
N. Y. statute, amended as to.....	708
Of good will.....	359
Present value life estate.....	288
Present worth .....	286
<b>Congress</b>	
Power of .....	6
<b>Connecticut</b>	
Address of tax collector.....	771
Amendment of 1919.....	848
Interest, discount, penalty.....	537
Mortality tables .....	285
Rates and exemptions.....	844
Statute. . . . .	844
Stock transfers taxed.....	848
Theory of the tax.....	10
<b>Conflict of laws</b> .....	74
<b>Consideration</b>	
Generally.....	114
Adequacy.....	151
For gift .....	114
Contemplation of death.....	118
As affecting testamentary transfers.....	136
Statutory provisions .....	136
Where gift complete <i>inter vivos</i> .....	137
Where contract executory.....	137-141

<b>Consideration — <i>Continued.</i></b>	<b>PAGE</b>
Must be adequate.....138,	151
Burden of proof.....	156
Services. . . . .	150
<b>Constitutionality</b>	
Generally. . . . .	20
Direct Federal tax.....	20
“ Full faith and credit ”.....	64
Notice and hearing.....	75
Title to act.....	61
Who may attack.....	61
Fourteenth Amendment . . . . .	61
Unconstitutional act void.....	73
As to sister States.....	77
<b>Construction</b>	
Of contracts . . . . .	61
Of wills . . . . .	180
Practical. . . . .	66
Retroactive or prospective.....	56
Strict or liberal.....	53
General rules . . . . .	73
As to domicile.....	221
As to charitable exemptions.....	237
<b>Contemplation of death.....</b>	<b>115</b>
Under Federal act.....	603
<b>Contempt</b>	
Executor may be punished for.....	417
Witness may be punished for.....	453
<b>Contingencies</b>	
N. Y. Statute, § 230.....	750
<b>Contingent remainder . . . . .</b>	<b>268</b>
N. Y. Statute, § 230.....	750
Form of taxing order.....	476
<b>Contracts</b>	
Executory. . . . .	141
Under seal . . . . .	149
<b>Conversion</b>	
Equitable . . . . .	247, 308
<b>Copied statutes . . . . .</b>	<b>65</b>

<b>Corporate books</b>	PAGE
As evidence .....	454
<b>Corporate property</b>	
Apportionment of .....	323
<b>Corporate stock</b> .....	318
Inventory of .....	426
<b>Corporations</b>	
Foreign. ....	320
Form of notice of intention to transfer stock.....	809
In States that tax nonresidents.....	775
In States that do not.....	783
Real estate of.....	697
<b>Costs</b>	
In Appellate Division.....	507
In Court of Appeals.....	507
On appeal .....	506
On delinquent proceedings.....	506
<b>Counsel fees</b>	
When reasonable, a deduction.....	380, 616
Inventory of .....	428
<b>County treasurer</b>	
Fees. ....	761
May act as appraiser.....	440
When mandamus lies against.....	521
<b>Court of Appeals</b>	
Appeals to .....	507
<b>Cousins.</b> .....	102
<b>Curtesy.</b> ....	186
Amendment, taxing .....	695
Under Federal act.....	602
<b>Custodia legis</b>	
Legacy in .....	251

**D.**

<b>Date</b>	
Of statute .....	34
<b>Death</b>	
Cause of action for.....	589
Chance of computed.....	283

**Death — Continued.**

PAGE

Contemplation of .....	115,	603
Gifts taking effect at.....		124
Presumption of .....		30
Rates fixed at.....		34
Transfer takes place at.....		334
Value at .....		334

**Debts**

As deductions .....		375
Doubtful claims .....		379
Forgiven by will.....	97, 377,	425
Inventory of .....		430
Liability on mortgage bond.....		376
Payment by power of appointment.....		99
Payment by will.....	97,	377
Partnerships .....		396
Pro-rating. ....		392
Report where pro-rated.....		465
Repairs to real estate.....		376
Situs of .....		330

**Decedent . . . . .** 212

Value of services.....		359
Personal transactions with.....		453

**Decree**

Assessing tax .....		481
Final and conclusive.....		481
Motion to modify.....		508
Of distribution .....		469
Of probate, effect of.....		466

**Deductions**

Administration expenses .....		380
Commissions. ....		386
Counsel fees .....		380
Debts. ....		375
Debts paid by will.....		377
Discount on legacy.....		381
Doubtful claims .....		379
Expenses of litigation.....		382
Family allowance .....		390
Funeral expenses .....		379
Marshaling assets .....		398
Mortgages. ....		375
On mortgage bond.....		376

<b>Deductions — <i>Continued.</i></b>	<b>PAGE</b>
Pro-rating debts .....	392
Repairs to real estate.....	376
Set forth in inventory.....	429
Taxes. . . . .	383
Under U. S. statute.....	613
<b>Deeds to take effect at death.....</b>	<b>125</b>
Exercising powers of appointment.....	181
<b>Definitions</b>	
In U. S. statute.....	579
N. Y. Statutes, § 243.....	766
<b>Delaware</b>	
Address of tax collector.....	771
Interest, discount, penalty.....	537
Mortality tables .....	285
Rates and exemptions, L. 1909.....	850
Rates and exemptions, L. 1917.....	849
Statutes 1909-1913 .....	851
Statute 1917 .....	850
<b>Delay</b>	
Unavoidable. . . . .	518
<b>Delinquent taxes</b>	
Proceedings to collect.....	524
<b>Delivery</b>	
Of gift .....	106
Re-delivery. . . . .	109
Symbolical. . . . .	109
<b>Denmark</b>	
Treaty with .....	86
<b>Deposits in banks.....</b>	<b>111</b>
Situs. . . . .	328
<b>Devolution. . . . .</b>	<b>75</b>
<b>Devisees</b>	
Agreements among .....	93
<b>Discount. . . . .</b>	<b>537</b>
How calculated .....	287
N. Y. Statute, § 223.....	741
On legacy .....	381

<b>Distribution</b>	PAGE
Decree of .....	469
<b>District attorney</b>	
Citation.....	799
Decree.....	800
Forms — petition.....	799
Order for citation.....	798
Proceeding by N. Y. Statute, § 235.....	758
Proceeding to collect delinquent taxes.....	524
<b>District of Columbia</b>	
No inheritance tax.....	852
<b>Dividends</b>	
Under Federal act.....	590
<b>Divorce</b>	
Effect on dower.....	186
Effect on entirety.....	194
<b>Divorced wife of son.....</b>	194
<b>Domestic corporations .....</b>	318, 627
<b>Domicile</b>	
Animus with factum.....	217
Animus without factum.....	215
As to army officer.....	219
As to beneficiaries generally.....	223
As to married women.....	218
As to widow.....	219
Burden of proof.....	220
Classification by .....	43
Definition.....	213, 582
Factum without animus.....	214
Rules as to.....	213
Statutes affecting .....	221
Synonymous with residence.....	213
<b>Donee</b>	
Of gift .....	104
Of power of appointment.....	175
<b>Donor</b>	
Of gift .....	109
Of power of appointment.....	175
<b>Double taxation .....</b>	25



	PAGE
<b>Doubtful claims</b> .....	379
<b>Dower</b> . . . . .	185
Allowed as deduction.....	186
Claimed in inventory.....	424
Intent of testator.....	186
Included in gross estate.....	602
<b>E.</b>	
<b>Election</b>	
By heir or legatee.....	33
<b>Embezzlement</b>	
Heirs must bear loss.....	37
<b>Entirety</b>	
Change in rights at death.....	194
Effect of statute.....	194
How created .....	192
How terminated .....	194
Nature of estate changed by N. Y. statute.....	192
Nature of the estate.....	191
Not of personal property.....	191
Tenancy by .....	190
Under Federal statute.....	606
<b>Equitable conversion</b> .....	247, 308
<b>Equitable relief</b>	
Not granted as to taxes.....	520
<b>Error</b>	
Ground for reappraisal.....	441
Of law, corrected by appeal only.....	512
<b>Escheat</b> . . . . .	205
<b>Estate</b>	
Interest in that of another.....	332
<b>Estate tax</b> .....	581
<b>Evidence</b>	
Appraiser may rule on admissibility.....	443
As to personal transactions with deceased, competent.....	453
Books of account.....	454
Corporate books .....	454
Circumstantial, sufficient .....	450

<b>Evidence — <i>Continued.</i></b>	PAGE
Materiality for surrogate.....	452
May be taken by surrogate on appeal.....	489
Newly discovered .....	489
Of foreign law.....	457
Opinion of experts.....	452
<b>Excise</b>	
Tax so defined.....	18
<b>Executor</b>	
Cannot be forced to answer without jurisdiction.....	417
Commissions. . . . .	386
Duties under U. S. statute.....	641
Duty of, New York Statute, § 224.....	742
Foreign executor not liable personally.....	525
Foreign executor may appeal.....	503
Form of affidavit by.....	417
May be punished for contempt.....	417
Must file inventory.....	416
Of nonresident need not testify.....	453
Penalty for refusal to testify.....	453
Personal liability of.....	458
Return by — form .....	672
State must show estate taxable.....	417
Statutes affecting .....	536
When he may appeal.....	502
When he may not appeal.....	503
Where he can marshal assets to reduce tax.....	398
Where he cannot.....	399
<b>Executory contracts</b> .....	141
<b>Exemptions</b>	
Bequests held exempt.....	241
Bequests held taxable.....	243
Burden of proof.....	238
Burden of proof on claimant.....	451
By general statutes not effective.....	21
Charter powers, the test.....	234
Construction of .....	55
Motions for.....	404
Not included in inventory.....	430
Not retroactive .....	56
Personal, N. Y. Statute, § 221.....	736
Strictly construed .....	55, 237
To charities .....	233

**Exemptions — Continued.**

	PAGE
To charities, N. Y. Statute, § 221.....	736
To persons .....	231
Under N. Y. Act of 1892.....	689
Under N. Y. Act of 1910.....	693
Under N. Y. Act of 1911.....	695
Under present N. Y. Act, 1916.....	709
Under U. S. statute.....	626

**Experts**

Qualifications of .....	452
-------------------------	-----

**F.****Factum**

As to domicile.....	214
---------------------	-----

**Family allowance .....** 186

A deduction .....	390
-------------------	-----

**Federal forms (see *Special Index*, p. 1071).....** 665**Federal statute (see *Special Index*, p. 1071).....** 579**Federal tax (see United States).....** 579**Fees**

Of county treasurer.....	761
--------------------------	-----

**Financial experts**

Report must be under oath.....	453
--------------------------------	-----

**Florida**

No inheritance tax.....	852
-------------------------	-----

**Foreclosure**

Effect of .....	36
-----------------	----

**Foreign corporations .....** 320**Foreign law**

Proof of .....	76, 457
Devolution controlled by.....	75

**Foreign real estate**

Where will directs payment of mortgage out of personalty.....	264
Must be shown in inventory.....	423

**Forms — New York**

Affidavit on application for letters testamentary or of administration. ....	808
Agreement upon composition of tax.....	804

**Forms — New York — Continued.****PAGE**

Application to Supreme Court for re-appraisal.....	807
Application to Superintendent of Insurance.....	791
Appraiser's report .....	461
Appraiser's report, pro-rating debts and assets.....	465
Certificate of payment of tax on real estate.....	806
District attorney proceedings:	
(a) Citation. ....	799
(b) Decree. ....	800
(c) Order for citation.....	799
(d) Petition. ....	798
Executor's affidavit .....	418
Inventory. ....	431
Maximum and minimum rates.....	479
Motion to exempt estate.....	405
Notice by bank or trust company.....	809
Notice of appeal to Appellate Division.....	499, 794
Notice of appeal from order on supplemental report.....	497
Notice of appeal to surrogate.....	485, 497, 793
Notice of assessment of tax.....	792
Notice of hearing before appraiser.....	790
Notice of intended delivery of safe deposit box contents.....	809
Notice of intended transfer of stock.....	809
Notice of motion to remit interest.....	795
Notice of transfer of deposits by bank or trust company.....	809
Nonresident proceedings:	
(a) Affidavit for appraisal.....	801
(b) Affidavit for consent to transfer property.....	803
(c) Order designating appraiser.....	803
(d) Petition for appraisal.....	802
Oath of appraiser.....	789
Order appointing appraiser.....	789
Order assessing tax.....	792
Order exempting estate.....	798
Order fixing tax, where no appraisal.....	797
Order of surrogate on appeal.....	793
Order on supplemental report.....	496
Order remitting interest.....	796
Order remitting report.....	491
Order returning report to appraiser.....	791
Petition for appraisal.....	796
Petition to remit interest.....	794
Stipulation waiving certification of papers.....	505
Subpoena — appraiser's.....	790
Supplemental report .....	494

**Forms — New York — Continued.**

PAGE

Taxing order .....	476
Taxing order on second appeal.....	496

**Forms — United States**

Sixty-day notice — resident estate.....	665
Sixty-day notice — insurance companies.....	667
Sixty-day notice — nonresident, by insurance companies.....	668
Claim for military exemption.....	669
Application for release from lien.....	670
Return by executor.....	672
Nonresident return .....	683

**Forms — California**

Stock transfers by nonresidents.....	896
--------------------------------------	-----

**Forms — Maryland**

Stock transfers by nonresidents.....	839
--------------------------------------	-----

**Forms — Massachusetts**

Affidavit by nonresident executor.....	907
Offer of settlement.....	909
Request for tax on future interests.....	910
Inventory — resident estate .....	910
Deductions, etc., resident.....	912
Determination by tax commission.....	915

**Forms — Missouri**

Transfers of stock by nonresidents.....	927
---	-----

**Forms — New Jersey**

Rules of department.....	953
Affidavit of nonresident executor.....	953
Instructions for same.....	955
Schedule to be filed.....	955
Affidavit of executor, resident decedent.....	957
Schedules, resident decedent.....	959

**Forms — Wisconsin**

Consent to transfer of securities.....	1062
Petition by nonresident executor.....	1062
Blank showing information required.....	1064
Order fixing tax.....	1065

**Fourteenth Amendment**

Statutes sustained under.....	61
-------------------------------	----

**France**

Treaty with .....	80
-------------------	----

<b>Fraud</b>	<b>PAGE</b>
Ground for re-appraisal.....	441
Under Federal act.....	646
<b>Full faith and credit.....</b>	<b>75</b>
<b>Fundamental principles .....</b>	<b>1</b>
<b>Funeral expenses .....</b>	<b>379, 614</b>
Inventory of .....	427
<b>Furniture</b>	
Situs. ....	312
Value of .....	340, 592
<b>G.</b>	
<b>Gains</b>	
After death not taxable.....	36
<b>Georgia</b>	
Address of tax collector.....	771
Interest, discount, penalty.....	537
Mortality tables .....	285
Rates and exemptions.....	852
Statute. . . . .	852
Theory of tax.....	10
<b>Gift</b>	
Advanced age; gift in contemplation of death.....	119
Agent of donee.....	108
Agent of donor.....	107
Bank deposits .....	111
Burden of proof.....	104, 451
Burden of proof on donee.....	104
<i>Causa mortis</i> .....	114
Consideration. . . . .	114
Contemplation of death.....	115
Delivery. . . . .	106
Delivery to agent.....	106
<i>Inter vivos</i> .....	103
Intent to give.....	105
Life use waived.....	130
Nature of contemplation.....	115
Part of income reserved.....	130
Power of revocation.....	111, 131
Re-delivery. . . . .	109
Statutory time limit.....	123
Stock transfer stamps.....	113

<b>Gift</b> — <i>Continued.</i>	PAGE
Symbolical delivery .....	109
Taxing effect at death.....	124
Tax accrues at date of gift.....	123
Validity.....	104
<b>Good will</b>	
A taxable asset.....	358
Number of years' purchase.....	360
Rules for computation.....	359
Where profits are speculative.....	368
Where no profits are shown.....	369
Under Federal act.....	593
<b>Grandchildren</b> .....	225
<b>Grandnephews and nieces</b> .....	102
<b>Gross estate</b>	
U. S. statute.....	589
<b>H.</b>	
<b>Hawaii</b>	
Interest, discount, penalty.....	537
Mortality tables .....	285
Rates and exemptions.....	854
Statute. . . . .	854
<b>Hearings</b>	
Before appraiser, form of notice.....	790
Burden of proof.....	450
Corporate books .....	454
Informal upon affidavits.....	450
Objections. . . . .	455
On appeal to surrogate.....	488
Proof of foreign law.....	457
Statute must provide for.....	64
Witnesses.....	451
<b>Heirs</b> .....	244
Election by .....	33
Agreements among .....	93
<b>Highest rate possible</b> .....	270, 478
N. Y. Statute, § 230.....	750
<b>Homestead</b> .....	188
<b>Horses</b> — inventory of .....	426

<b>Household Goods</b> .....	596
<b>Husband</b>	
Marital right .....	189
Federal act .....	634
Curtesy. . . . .	189, 602
Entirety. . . . .	190, 606
<b>I.</b>	
<b>Idaho</b>	
Address of tax collector.....	771
Interest, discount, penalty.....	537
Mortality tables .....	285
Rates and exemptions.....	856
Statute. . . . .	856
<b>Illegitimate child</b> .....	226
<b>Illinois</b>	
Act and amendments.....	858
Address of tax collector.....	771
Agreements between heirs.....	94
Aliens. . . . .	79
Amendments. . . . .	69
Composition of tax.....	868
Contemplation of death.....	117
Copied statutes .....	65
Dower. . . . .	188
Equitable conversion .....	85, 247
Escheats. . . . .	206
Executors, powers and duties.....	861
Federal tax — a deduction.....	384
Highest possible rate.....	267
Interest, discount, penalty.....	537, 861
Jurisdiction. . . . .	74
Life estates .....	860
Limitations. . . . .	518
Marshaling assets .....	399
Prior statutes .....	869
Procedure. . . . .	863
Rates of tax.....	858
Remainders. . . . .	267, 868
Repeal. . . . .	71, 869
Residence. . . . .	214
Safe deposit companies.....	413



**Illinois — Continued.**

PAGE

Statute as amended to date.....	859
Stock, situs of.....	319
Stock — transfers by nonresidents.....	862
Theory of the tax.....	10
Trust deeds .....	130
Trustees — power to appeal.....	502

**Income**

Reserved in trust deed.....	125
When part is reserved.....	130
As to life estates.....	255

**Indiana**

Acts, L. 1913, as amended by L. 1917.....	870
Address of tax collector.....	771
Amendments of 1917.....	871, 873
Amendment of 1919.....	874
Assessors of tax.....	874
Corporations — nonresident interest in.....	870
Exemptions. . . . .	870, 871
Interest, discount, penalty.....	537
Mortality tables .....	285
Nonresidents, intangibles not taxed.....	870
Rates. . . . .	870
Statute. . . . .	870
Theory of tax.....	10

**Inheritance**

Includes successions by will.....	18, 61, 84
Excludes entireties .....	197
Excludes joint estates.....	190

**Insurance**

See Life Insurance.....	157
Under Federal act.....	610

**Insurance superintendent**

Form of application to.....	791
-----------------------------	-----

**Intangible property**

New York Statute, § 220.....	733
------------------------------	-----

**Intangibles**

General discussion .....	544
Of nonresident .....	25
Classification by .....	49

<b>Intent</b>	PAGE
As to gifts.....	105
As to dower.....	186
<b>Interest</b> . . . . .	529
Accrued prior to death.....	36
New York Statute, § 223.....	741
Notice of motion to remit; form.....	795
Order remitting; form.....	795
Petition to remit; form.....	794
Rate in computing life estate values.....	283
Refund may be compelled by mandamus.....	521
Rule for compounding.....	286
Set forth in inventory.....	425
<b>Inter vivos</b>	
Where transaction completed.....	138
<b>Intestacy</b> . . . . .	84
As to personal property.....	100
Transfers by New York Statute, § 220.....	733
<b>Intestate laws</b> . . . . .	100
Transfers by . . . . .	84
<b>Inventory</b>	
Form of . . . . .	431
Form of affidavit by executor.....	418
Must be filed by executor.....	416
Preparation of inventory.....	423
Under Federal act.....	643
<b>Iowa</b>	
Address of tax collector.....	770
Interest, discount, penalty.....	537
Mortality tables . . . . .	285
Rates and exemptions.....	875
Statute. . . . .	875
Theory of the tax.....	10
<b>Italy</b>	
Treaty with . . . . .	80
<b>J.</b>	
<b>Jewelry</b> . . . . .	426
Appraisal of — Federal act.....	598
Value of . . . . .	341
Set forth in inventory.....	426

<b>Joint accounts</b>	PAGE
Shown in inventory.....	425
<b>Joint estates</b>	
Appraisal of Federal act.....	606
New York statute, amended as to.....	707
New York Statute, § 220, subd. 7.....	736
<b>Joint tenancy</b> .....	197
Construction of, New York statute.....	201
Not generally taxable.....	197
Specifically taxed by statute.....	200
Survivorship not taxable as an inheritance.....	197
Under Federal act.....	606
<b>Judge of probate</b>	
As taxing officer.....	471
<b>Judicial functions</b>	
Of appraiser .....	441
<b>Jurisdiction</b>	
As to domicile.....	74
As to tax proceedings.....	470
Decree vacated where wanting.....	511
Depends on notice.....	444
Effect of probate decree.....	466
Necessary before executor can be punished.....	417
Of appraiser .....	441
Of surrogate — New York Statute, § 228.....	746
Personalty of resident taxable though in foreign States.....	6, 22
Parties. . . . .	74
Subject matter .....	74

**K.**

<b>Kansas</b>	
Act of 1915, as amended, 1919.....	880
Address of tax collector.....	772
Amendment of 1917.....	884
Amendment of 1919.....	885
Collateral tax prior to 1919.....	880
Direct heirs now taxed.....	880
Exemptions. . . . .	880
Interest, discount, penalty.....	537
Mortality tables .....	285
Rates, under act of 1909.....	880
Rates under act of 1915.....	881
Rates under act of 1919.....	881

**Kentucky**

Address of tax collector.....	772
Interest, discount, penalty.....	537
Mortality tables .....	285
Rates and exemptions.....	886
Statute. . . . .	886
Theory of the tax.....	10

**L.****Laches**

Motion to modify decree denied.....	514
-------------------------------------	-----

<b>Land contracts</b> .....	310
-----------------------------	-----

<b>Lapsed legacy</b> .....	250
----------------------------	-----

**Laws**

Conflict of .....	74
Proof of foreign.....	76
When in force.....	34

<b>Leases</b> .....	311
---------------------	-----

Covenant to pay taxes.....	22
----------------------------	----

**Legacy**

Charge on real estate.....	248
Discount on .....	381
From what fund tax payable.....	252
Impressed with trust.....	249
<i>In custodia legis</i> .....	251
Lapsed. . . . .	250
Legacy duty .....	17

<b>Legatees</b> .....	244
-----------------------	-----

Election by .....	33
Of personal property.....	248
Renunciation by .....	32, 248

**Legislature**

Inherent power of.....	17
Successive acts .....	74
Power to amend or repeal.....	68, 69
Limitations of power.....	5

**Letters testamentary**

Form of affidavit.....	808
------------------------	-----

**Liabilities**

See Deductions .....	374
----------------------	-----

<b>Library</b>	PAGE
Exempt. . . . .	242
<b>Liberal Construction</b> . . . . .	53
<b>Lien</b>	
Of tax . . . . .	244
Of tax, New York Statute, § 224. . . . .	742
Of United States tax. . . . .	652
When general taxes become. . . . .	385
<b>Life estates</b>	
Generally. . . . .	254
Charged with annuity. . . . .	257
Computations of value. . . . .	288
Fund from which payable. . . . .	255
Power to invade principal. . . . .	258
New York rule as to such power. . . . .	259
With power of appointment. . . . .	263
Under Federal act. . . . .	589, 598
<b>Life use</b>	
Waiver of . . . . .	130
<b>Life insurance</b>	
Generally. . . . .	157
Federal tax on. . . . .	157, 160
Nature of the contract. . . . .	158
No title to fund in assured. . . . .	158
Insurance company pays the tax. . . . .	159
An inheritance where payable to the estate. . . . .	162
Not taxable where payable to beneficiary. . . . .	165
Construction of policies. . . . .	171
Statutory provisions . . . . .	173
Situs. . . . .	331
Shown in inventory. . . . .	425
Under Federal act. . . . .	610
<b>Limitations, Statute of</b>	
Applied to inheritance taxes. . . . .	517
Claims barred by. . . . .	429
Construed retroactively . . . . .	57
Do not run against the State. . . . .	518
New York Statute, § 245. . . . .	768
Under Federal act. . . . .	590
<b>Litigation</b>	
Expenses of, when a deduction. . . . .	382
To determine tax. . . . .	519

**Louisiana****PAGE**

Address of tax collector.....	772
Interest, discount, penalty.....	537
Mortality tables .....	285
Rates and exemptions.....	889
Statute. . . . .	889
Theory of the tax.....	11

**M.****Maine**

Address of tax collector.....	772
Amendments. . . . .	893
Interest, discount, penalty.....	537
Mortality tables .....	285
Prior statutes .....	893
Rates and exemptions.....	891
Statute. . . . .	891
Theory of the tax.....	11

**Mandamus**

Proper remedy to compel refund.....	521
Or the appointment of appraiser.....	521
Or the issuance of receipt.....	522
Refused where dispute as to amount of tax.....	523
Refused where right of appeal.....	524

<b>Marital right</b> .....	189
----------------------------	-----

**Market price**

Of stock .....	343
----------------	-----

**Married women**

Domicile of .....	218, 222
-------------------	----------

<b>Marshaling assets</b> .....	398
--------------------------------	-----

**Maryland**

Address of tax collector.....	772
Form for nonresident stock transfers.....	896
Interest, discount, penalty.....	531
Mortality tables .....	285
Prior statutes .....	895
Rates and exemptions.....	894
Statute. . . . .	894
Theory of the tax.....	11

**Massachusetts**

	PAGE
Acts as amended to January 1, 1916.....	899
Act of 1916.....	902
Amendments, 1918 .....	905
Address of tax commission.....	772
Adequate consideration .....	153
Additional tax, 1918.....	905
Agreements to make a will.....	90
Ante-nuptial agreement .....	33
Appointment, power of.....	174, 183
Authorities tabulated .....	905, 906
Brother. . . . .	897
Cases, special table.....	905, 906
Charitable bequests .....	237
Compromise agreements .....	94
Delivery of gift.....	107
Discount on tax.....	772, 905
Equitable conversion .....	247, 309
Exemptions. . . . .	898
Forms	
Affidavit by nonresident executor.....	907
Offer of settlement.....	909
Request for tax on future interests.....	910
Inventory of assets — resident.....	910
List of deductions, etc. — resident.....	912
Determination by tax commission.....	915
Gifts. . . . .	107
Interest. . . . .	772, 905
Joint estates .....	197
Life estates .....	264, 900
Marshaling assets .....	400
Mortality tables .....	285
Mortgage — situs.....	314
nonresidents. . . . .	897
Power of appointment.....	174, 176, 183
Practical construction of statute.....	66
Prior statutes .....	905
Rates —	
Prior to 1912.....	898
After 1912 to 1916.....	897
After 1916 .....	898
Additional tax of 1918.....	905
Reciprocal provision repealed.....	81

**Massachusetts — Continued.**

PAGE

**Tax —**

A "commodity" .....	18
Deferred payment of.....	900
Discount on .....	905
Theory of .....	11
Trust deeds .....	133

**Masonic lodge**

Exempt. ....	242
--------------	-----

<b>Maximum and minimum rates</b> .....	276, 478, 481, 696
--	--------------------

**Michigan**

Acts prior to 1919.....	915
Amendment, 1919 .....	916
Address of tax collector.....	772
Interest, discount, penalty.....	537
Mortality tables .....	285
Prior statutes .....	915
Rates and exemptions prior to 1919.....	915
Rates subsequent to 1919 amendment.....	916
Statute. ....	916
Theory of the tax.....	12

<b>Military exemption claim — form</b> .....	669
--	-----

**Minnesota**

Acts, prior to 1919.....	920
Act of 1919.....	923
Address of tax collector.....	772
Exemptions. . . . .	920
Interest, discount, penalty.....	537
Mortality tables .....	285
Prior statutes .....	924
Rates and exemptions.....	920
Recent Minnesota cases.....	924

**Mississippi**

Act of 1918.....	925
Exemptions. . . . .	925
Interest, discount, penalty.....	539
Nonresidents not taxed as to intangibles.....	925
Rates. . . . .	925

**Missouri**

Act of 1917.....	927
Amendment of 1919.....	931



**Missouri — Continued.**

PAGE

Address of tax collector.....	772
Exemptions. . . . .	927, 931
Forms — transfers of nonresident stock.....	932, 933
Interest, discount, penalty.....	537
Mortality tables . . . . .	285
Rates and exemptions.....	927

**Mistake of fact**

Corrected on motion.....	509
--------------------------	-----

**Mobilia personam sequuntur..... 212****Modifying decree ..... 508****Montana**

Address of tax collector.....	772
Amendment, 1917 . . . . .	934
Interest, discount, penalty.....	537
Mortality tables . . . . .	285
Rates and exemptions.....	933
Statute. . . . .	933
Theory of the tax.....	13

**Monument**

Cost of, deducted.....	379, 615
------------------------	----------

**Mortality tables ..... 283****Mortgage**

Debt as a deduction.....	375
Devisee of land takes " <i>cum onere</i> ".....	375
Habitual presence . . . . .	317
In inventory . . . . .	424
Situs. . . . .	313
Situs at domicile.....	313
Transient presence . . . . .	317
When will directs payment out of personalty.....	375
Where physically present.....	315
Where the land lies.....	314

**Motion**

For mistake of fact.....	509
Form for . . . . .	405
Lack of jurisdiction.....	511
Modifying decree . . . . .	508
Not granted to correct error of law.....	512
Nor where there is laches.....	514

<b>Motion — <i>Continued.</i></b>	PAGE
Or bad faith.....	515
Or when Statute of Limitation has run.....	517
To exempt too late when appraiser has been appointed.....	491
To exempt estate.....	404
To remit penalty.....	418
To remit appraiser's report.....	475
<b>Motor cars .....</b>	426
<b>Municipalities</b>	
Have no power to levy.....	21
<b>Mutual acknowledgment of child.....</b>	227
<b>Mutual mistake</b>	
Decree modified .....	509
<b>Mutual wills .....</b>	91
<b>N.</b>	
<b>National bank</b>	
A domestic corporation when in State.....	320
<b>Nebraska</b>	
Address of tax collector.....	772
Interest, discount, penalty.....	537
Mortality tables .....	285
Prior statute .....	936
Rates and exemptions.....	935
Statute. . . . .	935
Theory of the tax.....	13
<b>Nephew . . . . .</b>	102
<b>Net estate</b>	
Under United States statute.....	612
<b>Nevada</b>	
Address of tax collector.....	772
Interest, discount, penalty.....	537
Mortality tables .....	285
Rates and exemptions.....	937
Statute. . . . .	937
<b>New Hampshire</b>	
Act as amended to date.....	939
Address of tax collector.....	772
Collaterals only taxed prior to 1919.....	939

**New Hampshire — Continued.**

	PAGE
Digest of authorities.....	943
Direct heirs taxed.....	939
Interest, discount, penalty.....	537
Mortality tables .....	285
Nonresidents, intangibles not taxed.....	939
Prior rates .....	939
Rates under act of 1919.....	939
Theory of tax.....	13

**New Jersey**

Act as amended to date.....	944
Address of tax collector.....	772
Amendment, 1914 .....	952
Computation of tax.....	944
Forms —	
Rules of department.....	953
Affidavit of nonresident executor.....	953
Instructions for same.....	955
Schedule to be filed.....	955
Affidavit of executor, resident decedent.....	957
Schedules, resident decedent.....	959
Interest, discount, penalty.....	537
Mortality tables .....	285
National bank stock taxable.....	944
Penalty as to corporation transferring stock.....	949
Rates of tax.....	944
Stock of domestic corporations taxed.....	944
Theory of tax.....	13

**New Mexico**

Act of 1919.....	964
Effective 1920 .....	964
Exemptions. . . . .	964
Reciprocal provision as to nonresidents.....	964
Rates. . . . .	964

**New York**

Accrual and payment, § 222.....	740
Address of tax collector.....	772
Amendments, 1917, 1918, and 1919.....	713
Appeal and other proceedings, § 232.....	754
Application of taxes, § 242.....	766
Appointment of appraisers, § 229.....	747
Bequests in lieu of commissions, § 226.....	744
Books and forms, § 238.....	761

**New York — Continued.**

PAGE

Capital invested in business.....	699
Change in theory of tax.....	694
Collateral inheritance tax.....	687
Composition of tax, § 233.....	756
Computations. . . . .	708
Curtesy taxed . . . . .	695
Definitions, § 243.....	766
Definitions. . . . .	694
Determination of surrogate, § 231.....	753
Direct inheritance tax.....	688
Entirety, tenancy by.....	708
Exemptions. . . . .	707, 729
Exemptions, § 221c.....	740
Exemptions and limitations, § 221.....	736
Exemptions not applicable, § 244.....	768
Fees of county treasurer, § 237.....	761
Forms. . . . .	789
Highest possible rate.....	691
History and development.....	685
Interest, discount and penalty.....	537, 741
Income tax . . . . .	731
Investment tax . . . . .	714, 739
Joint estates . . . . .	707
Jurisdiction of surrogate, § 228.....	746
Liability of corporations, § 227.....	745
Lien and collection by executor, § 224.....	742
Limitations of time, § 245.....	768
List of statutes.....	686
Maximum and minimum rates.....	696
Mortality tables . . . . .	285
Nonresidents. . . . .	696
Original statute of 1909.....	692
Partnership assets . . . . .	698
Policy as to nonresidents.....	696
Powers of appointment.....	176, 179, 689, 735
Proceedings by appraiser, § 230.....	750
Proceedings by district attorney, § 235.....	758
Rates in 1910.....	693
Rates in 1911.....	695
Rates and exemptions.....	709
Rates of tax, § 221a.....	738
Real estate first taxed.....	692
Real estate of corporations.....	697
Receipts from county treasurer or comptroller, § 236.....	760

**New York — Continued.**

PAGE

Refund of tax erroneously paid, § 225.....	743
Report of comptroller, payments, refunds, § 241.....	763
Report of county treasurer, § 240.....	763
Report of surrogate, § 239.....	762
Resident defined .....	702
Statute as amended.....	732
Surrogate assistants, § 234.....	756
Tangibles and intangibles.....	706, 733
Tax on investments (secured debts).....	739
Taxable transfers, § 220.....	733
Theory of tax.....	14

Newly discovered evidence.....	489
--------------------------------	-----

Next of kin.....	103
------------------	-----

Niece . . . . .	102
-----------------	-----

**Nonresidents**

Corporations in States that tax them.....	000
Corporations in States that do not.....	582
Definitions. . . . .	582
Executor of, need not testify.....	417
Intangibles of, within jurisdiction.....	25
Interest in estate of another.....	332
New York Statute, § 220.....	733
Penalty for refusal to testify.....	417
Policy of New York statute.....	696
Procedure as to.....	409

**Nonresident proceedings — form**

Affidavit for appraisal.....	801
Affidavit for consent to transfer property.....	803
Motion to exempt.....	409
Order appointing appraiser.....	803
Petition. . . . .	802

**North Carolina**

Address of tax collector.....	772
Interest, discount, penalty.....	537
Mortality tables .....	285
Prior statutes .....	972
Rates and exemptions.....	769
Statute. . . . .	969
Theory of the tax.....	14

<b>North Dakota</b>	PAGE
Act with amendments to date.....	972
Address of tax collector.....	772
Interest, discount, penalty.....	537
Mortality tables .....	286
Prior statutes .....	980
Rates —	
In force, 1919.....	972
1917 to 1919.....	973
1913 to 1917.....	973
<b>Norway</b>	
Treaty with .....	80
<b>Notes</b>	
Shown in inventory.....	425
Valuation of .....	343, 594
<b>Notice</b>	
Appeal to surrogate.....	483
Assessment of tax; form.....	792
By mail sufficient.....	447
Failure to give invalidates proceedings.....	444
Is jurisdictional .....	444
Must specify the property.....	446
Must state grounds.....	484
Of hearing before appraiser; form.....	790
Presumption of .....	448
Statute must provide for.....	64
Under United States statute.....	632, 637
Form for 60-day notice.....	665
Where notice impossible.....	448
<b>Notice of appeal</b>	
From order on supplemental report, form of.....	496
Service of .....	505
To appellate division; form of.....	499
<b>O.</b>	
<b>Oath</b>	
Must be subscribed to affidavit.....	453
Of appraiser, form of.....	789
<b>Objections</b>	
Comptroller must take before appraiser.....	456
Failure to take may not excuse error.....	455

**Officers**

PAGE

Names and addresses of different State officials.....	771
---	-----

**Ohio**

Act of 1919.....	980
Address of tax collector.....	772
Consideration of gift.....	136
Constitutionality. . . . .	65
Collateral heirs taxed.....	980
Direct heirs first taxed 1919.....	980
Interest, discount, penalty.....	537
Mortality tables . . . . .	286
Notice. . . . .	65
Rates. . . . .	980
Retroactive laws . . . . .	59
Saving clauses . . . . .	71
Stock transfers by nonresidents taxed.....	980
Theory of tax.....	14

**Oklahoma**

Act of 1915.....	990
Amendment of 1919.....	993
Address of tax collector.....	772
Interest, discount, penalty.....	537
Rates and exemptions under act of 1915.....	990
Rates under amendment of 1919.....	991

**Opinion evidence**

By experts . . . . .	452
----------------------	-----

**Order**

Appealed from . . . . .	503
Appointing appraiser; form.....	789
Assessing tax; form.....	792
Exempting estate; form.....	798
Fixing tax, second appeal; form of.....	496
Not appealable . . . . .	475
Of surrogate on appeal; form.....	793
On supplemental report; form of.....	496
Remitting interest; form of.....	796
Remitting report . . . . .	474
Remitting report; form of.....	491
Remitting report to appraiser; form.....	791
Resettling. . . . .	504

**Oregon**

Address of tax collector.....	773
Interest, discount, penalty.....	537

<b>Oregon — Continued.</b>	PAGE
Mortality tables .....	286
Rates and exemptions prior to 1917.....	997
Rates and exemptions, 1917.....	997
Rates, 1919 .....	998
Statutes. . . . .	998
<b>Origin</b>	
Of inheritance taxation.....	1
<b>P.</b>	
<b>Parties</b>	
To the transfer.....	212
<b>Partition</b> . . . . .	246
<b>Partnership</b>	
Agreement — good will .....	149, 360
Bequests to .....	354
Inventory of interest.....	427
New York statute, amended as to.....	698
Nonresidents. . . . .	396
Pro-rating debts and assets.....	396
Real estate of.....	333, 356
Situs of assets.....	332
Value of interest.....	354
<b>Payment</b>	
Does not estop comptroller.....	481
Of tax, New York Statute, § 222.....	740
Of United States tax.....	647
To wrong official no excuse.....	520
Of debt by will.....	97, 377
<b>Penalty</b> . . . . .	537
For not paying stock transfer tax.....	714
Motion to remit.....	518
Motion to remit — forms.....	584, 585
New York Statute, § 223.....	741
Under United States statute.....	655
Tax distinguished from.....	17
<b>Pennsylvania</b>	
Act of 1887.....	1000
Act of 1917.....	1004
Act of 1919.....	1009
Address of tax collector.....	773
Annuities. . . . .	151



**Pennsylvania — Continued.**

	PAGE
Collaterals taxed under act of 1887.....	1000
Collection of tax.....	1015
Definitions. . . . .	1017
Direct heirs taxed, 1917.....	1004
Dower. . . . .	185
Equitable conversion .....	247, 308
Executors, powers .....	501
Federal tax — not a deduction.....	1010
Gifts. . . . .	107
Governor's memorandum .....	1008
Interest, discount, penalty.....	537
Mortality tables .....	286
Nonresident decedents, statute as to.....	1014
Notice. . . . .	65
Payment of tax.....	1011
Power of appointment.....	184
Procedure. . . . .	1015
Rate of tax.....	1000, 1010
Renunciation. . . . .	249
Repeal. . . . .	1017
Retroactive statutes .....	57
Revocation of gift.....	111
Stock — transfer by nonresident taxed.....	1000
Tax —	
Payment. . . . .	1011
Rate. . . . .	1000, 1010
Theory of .....	14
Trust deeds .....	128, 135
Unconstitutional statute .....	60

**Personal liability**

Of executor or administrator.....	525, 660
Of beneficiaries .....	527

**Personal property**

Follows situs of domicile.....	22, 23
No tenancy by entirety in.....	191
Of intestate .....	101
Under Federal act.....	590

**Pledged securities**

Inventory of .....	426
Situs. . . . .	324
Value of .....	352

<b>Pictures</b>	PAGE
Inventory of .....	426
Value of .....	340
<b>Power of appointment</b>	
As to remainders.....	278
Common-law rule .....	173
Construction of wills.....	180
Development New York rule.....	179
Highest possible rate.....	691
Massachusetts rule .....	176
New York rule.....	176
New York statute of 1896.....	689
New York Statute, § 220, subd. 6.....	735
Question of residence.....	183
Repeal of clause as to failure to appoint.....	689
Statutes affecting .....	534
Statutory rule .....	175
Transfers by, in inventory.....	430
United States statute concerning.....	608
When in life tenant.....	263
When power exercised by deed.....	181
<b>Power of revocation.....</b>	<b>111, 131</b>
<b>Power to invade principal.....</b>	<b>258</b>
<b>Power to revoke.....</b>	<b>131</b>
<b>Practical construction .....</b>	<b>66</b>
<b>Present worth</b>	
How calculated .....	288
Chance of death, affecting.....	289
<b>Presumption</b>	
Of death .....	30
Of notice .....	448
<b>Privilege taxed .....</b>	<b>17</b>
<b>Probate decree</b>	
Effect of .....	446
<b>Probate judge</b>	
As taxing officer.....	471
<b>Proceedings</b>	
As to nonresident — forms.....	801-803
Before appraiser .....	439

<b>Proceedings — Continued.</b>	PAGE
Invalidated by failure to give notice.....	444
Jurisdiction. . . . .	470
On appeal . . . . .	466
To collect delinquent taxes.....	524
<b>Procedure</b>	
As to nonresidents.....	409
Controlled by law in force at date of proceedings.....	34
Statute must provide for.....	404
<b>Profits</b>	
Of partnership . . . . .	368
<b>Pro forma</b>	
Order as of course.....	473
<b>Proof</b>	
Of foreign law.....76,	457
Of notice . . . . .	446
<b>Property</b>	
classification by . . . . .45,	48
Definitions. . . . .	306
<b>Pro-rating</b>	
Form of report.....	465
Of debts . . . . .	392
Partnerships. . . . .	396
Where both local and foreign debts and assets.....	395
Where local debts paid with foreign assets.....	394
Where local assets and no local debts.....	393
Where local debts exceed local assets.....	392
<b>Prospective laws</b> . . . . .	56
<b>Public purpose</b> . . . . .67,	528

**R.**

<b>Rates of tax</b>	
Arbitrary or confiscatory.....	67
Fixed by date of death.....	34
Present rates, New York: Act of 1916.....	709
Under New York act of 1892.....	689
Under New York act of 1910.....	693
Under New York act of 1911.....	695
Under present United States statute.....	569
Under United States statute, 1898.....	552

<b>Re-appraisal</b>	<b>PAGE</b>
Application for; form.....	597
<b>Real estate</b>	
As to aliens.....	248
Charged with legacy.....	248
Commissions on sale.....	390
Certificate of payment of tax on; form.....	806
Description in inventory.....	423
Entireties. . . . .	190
Evidence of expert as to value.....	452
Equitable conversion . . . . .	247, 308
First taxed in New York.....	692
Form of description in inventory.....	431
Heirs to . . . . .	244
Land contracts . . . . .	310
Leases. . . . .	311
Lien of tax.....	244
Not a legacy tax.....	19
Not taxable in foreign jurisdiction.....	307
Of corporations . . . . .	697
Of intestate . . . . .	100
Partition. . . . .	246
Partnerships. . . . .	356
Repairs to . . . . .	376
Sales of, to pay tax.....	247
"Succession" — includes.....	19
Situs. . . . .	307
Under Federal act.....	590
Valuation of fractional interest.....	339
Value. . . . .	337
<b>Receipts</b>	
New York Statute, § 236.....	760
<b>Reciprocal statutes</b> . . . . .	81
General discussion . . . . .	444
<b>Refunds</b>	
Of tax, New York Statute, § 241.....	763
Of tax erroneously paid.....	521
<b>Regulations</b>	
Of United States Treasury Department.....	579
<b>Relationship</b>	
To decedent . . . . .	225
Classification by . . . . .	44

	PAGE
<b>Remainders</b> . . . . .	265
Beneficiary uncertain . . . . .	268
Full undiminished value . . . . .	281
Full undiminished value taxable, New York Statute, § 230 . . . . .	750
Law in force at date of death . . . . .	266
Maximum and minimum rate . . . . .	276
Powers of appointment . . . . .	278
Presently taxable . . . . .	267
Present taxation, when contingent . . . . .	476
Statutes affecting . . . . .	468
Taxation postponed . . . . .	267
Taxed at highest possible rate . . . . .	270
Vested before statute . . . . .	266
Where amount uncertain . . . . .	277
Under Federal act . . . . .	589
<b>Remitting penalty</b>	
Motion for . . . . .	518
<b>Remitting report</b> . . . . .	474
<b>Removal</b>	
Of appraiser . . . . .	440
<b>Renunciation</b>	
By legatee . . . . .	32, 248
<b>Repairs to real estate</b> . . . . .	376
<b>Repeal</b>	
By implication . . . . .	71
Effect of . . . . .	69
Saving clause . . . . .	70
Incidental effects of . . . . .	72
<b>Report</b>	
Form for . . . . .	461
May be remitted . . . . .	474
Taxation suspended . . . . .	459
What it must show . . . . .	459
What it should contain . . . . .	457
<b>Resettling order</b> . . . . .	504
<b>Residence</b>	
As to powers of appointment . . . . .	183
Definition . . . . .	213
Of beneficiaries . . . . .	223
Test is of domicile . . . . .	582

<b>Resident</b>	PAGE
Definition. . . . .	767
Personalty of, liable to tax. . . . .	22
<b>Retroactive amendments</b> . . . . .	69
<b>Retroactive laws</b> . . . . .	56
Where estate is <i>in custodia legis</i> . . . . .	39, 57
Intent must be clear. . . . .	59
<b>Return</b>	
By executor; United States statute. . . . .	639, 645
Form. . . . .	672
<b>Revenue</b>	
Exemptions. . . . .	546
Produced by tax. . . . .	546
Table showing tax receipts. . . . .	548
The rate . . . . .	546
<b>Revocation</b>	
Of gift . . . . .	111
Power reserved . . . . .	131
<b>Rhode Island</b>	
Address of tax collector. . . . .	773
Interest, discount, penalty. . . . .	537
Mortality tables . . . . .	286
Rates and exemptions. . . . .	1018
Statutes. . . . .	1018
<b>Right</b>	
To transmit . . . . .	20, 46
To receive . . . . .	45
<b>S.</b>	
<b>Safe deposit box</b>	
Comptroller may inspect. . . . .	412
Consent for transfer of funds. . . . .	414
Form of notice of intention and deliver contents. . . . .	809
May not impose arbitrary conditions. . . . .	414
Property belonging to another. . . . .	415
<b>Safe deposit companies</b>	
Duties of, New York Statute, § 227. . . . .	745
<b>Sale</b>	
Of property in vicinity. . . . .	339
Of stock . . . . .	343
To pay tax. . . . .	247
Where in fact a gift. . . . .	136

<b>Savings bank book</b>	PAGE
Gift of .....	109
<b>Saving clauses</b> .....	70
<b>Schedules</b>	
Form of .....	419
<b>Seal importing consideration</b> .....	149
<b>Secured debts</b>	
Penalty for not paying tax.....	714
<b>Securities</b>	
Active. . . . .	343
Inactive. . . . .	345
<b>Services</b>	
As a deduction.....	378
<b>Services of decedent</b>	
Value of .....	359
<b>Sister.</b> . . . .	102
<b>Situs</b>	
Bank deposits .....	328
Bonds. . . . .	313
Commercial paper .....	313
Corporate stock .....	318
Debts. . . . .	330
Domestic corporations .....	318
Estate of another.....	332
Foreign corporations .....	320
Land contracts .....	310
Leases. . . . .	311
Life insurance .....	331
Mortgages. . . . .	313
Of property .....	307
Other choses in action.....	328
Partnership interest .....	332
Pledged securities .....	324
Real estate .....	307
Seat in stock exchange.....	331
Tangible property .....	312
<b>Son-in-law.</b> . . . .	230, 231
<b>South Carolina</b>	
No inheritance tax.....	1024

<b>South Dakota</b>	PAGE
Address of tax collector.....	773
Interest, discount, penalty.....	537
Mortality tables .....	286
Rates and exemptions.....	1025
Statute. . . . .	1026
Theory of the tax.....	14
<b>Sovereign State</b>	
No action lies against.....	517
<b>Spain</b>	
Treaty with .....	81
<b>Special guardian</b>	
Not practice to appoint.....	488
<b>Special partner</b> .....	354
<b>Stamps</b>	
Penalty for not affixing to stock.....	739
Stock transfers .....	113, 456
<b>State statutes</b>	
Appraisal. . . . .	536
Banks and trust companies.....	542
Collaterals and strangers only.....	543
Common-law transfers .....	533
Double taxation .....	545
Executors, duties of.....	536
Exemptions. . . . .	546
General résumé .....	532
In avoidance of tax.....	532
Interest, discount, penalty.....	537
Interest taxed .....	542
Life estate .....	534
Nonresident decedents .....	543
Powers of appointment.....	534
Receipts from tax.....	548
Reciprocal statutes .....	544
Remainders. . . . .	535
Revenue. . . . .	546
Tangibles and intangibles.....	544
The rate .....	546
Valuation. . . . .	537
Where the statutes differ.....	543
Wherein they agree.....	532
Will and intestacy.....	532



<b>Statutes</b>	<b>PAGE</b>
Arizona. . . . .	811
Arkansas. . . . .	816
California. . . . .	821
Colorado. . . . .	840
Connecticut. . . . .	844
Delaware. . . . .	849
Georgia. . . . .	852
Hawaii. . . . .	854
Idaho. . . . .	856
Illinois. . . . .	858
Indiana. . . . .	870
Iowa. . . . .	875
Kansas. . . . .	880
Kentucky. . . . .	886
Louisiana. . . . .	889
Maine. . . . .	891
Maryland. . . . .	893
Massachusetts. . . . .	897
Michigan. . . . .	915
Minnesota. . . . .	920
Mississippi. . . . .	925
Missouri. . . . .	927
Montana. . . . .	933
Nebraska. . . . .	935
Nevada. . . . .	937
New Hampshire . . . . .	939
New Jersey . . . . .	944
New Mexico . . . . .	964
New York . . . . .	732
North Carolina . . . . .	969
North Dakota . . . . .	973
Ohio. . . . .	980
Oklahoma. . . . .	990
Oregon. . . . .	997
Pennsylvania. . . . .	1000
Rhode Island . . . . .	1018
South Dakota . . . . .	1025
Tennessee. . . . .	1033
Texas. . . . .	1037
United States . . . . .	579
Utah. . . . .	1039
Vermont. . . . .	1041
Virginia. . . . .	1044
Washington. . . . .	1050

<b>Statutes — <i>Continued.</i></b>	PAGE
West Virginia .....	1053
Wisconsin. . . . .	1056
Wyoming. . . . .	1067
<b>Statutes, construction of</b> .....	53
As to domicile.....	217
Copied or adopted.....	65
Notice and hearing.....	64
Reciprocal. . . . .	81
Retroactive or prospective.....	56
Sustained in part if severable.....	54, 60
Sustained under Fourteenth Amendment.....	61
Practical. . . . .	66
Where held invalid.....	60
Public purpose .....	67
Joint tenancy .....	201
Strict construction .....	53
Amendments. . . . .	68
Successive laws .....	74
<b>Stepchildren</b> . . . . .	226
<b>Stipulation</b>	
Waiving certification, form.....	505
<b>Stock</b>	
Situs. . . . .	318
Closely held .....	346
Losses on sale not a deduction.....	37
Transfer stamps .....	113
Value of .....	343, 592
<b>Stock exchange</b>	
Seat in .....	331
Taxable. . . . .	331
<b>Stock transfer stamps</b> .....	113
<b>Stock transfer tax</b>	
Penalty for not paying.....	714
<b>Subpœnas</b>	
Appraiser may issue.....	442
By appraiser; form.....	790
<b>Superintendent of Insurance</b>	
Form of application to.....	791
<b>Supplemental report</b>	
Form of .....	494

<b>Supreme Court</b>	PAGE
Of United States, appeals to.....	508
<b>Surrogate</b>	
Appeal to .....	483
Appeal to; form of notice.....	485, 497, 783
As taxing officer.....	471
Cannot assess tax on guess.....	475
Cannot require Comptroller to refund tax.....	521
Designation of appraiser.....	440
Determination by .....	468
Determination by New York Statute, § 231.....	753
Determines materiality of evidence.....	451
Discretion as to resettling order.....	504
Duty to appoint appraisers not discretionary.....	441
Hearings on appeal.....	488
Jurisdiction, New York Statute, § 228.....	746
May act as appraiser.....	441
May take evidence on appeal.....	489
Motions to exempt.....	490
No power to remit interest.....	519
Notice of appeal from second taxing order.....	496
Notice of appeal to Appellate Division.....	499
Order on supplemental report.....	495
Order remitting report.....	491
Power to vacate decree.....	509
Supplemental report of appraiser.....	493
Taxing order upon second appeal.....	496
Where mandamus lies against.....	521
<b>Survivorship</b>	
In joint tenancy.....	197
<b>Sweden</b>	
Treaty with .....	81
<b>Symbolical delivery</b> .....	109
<b>T.</b>	
<b>Tangible property</b>	
As to value.....	340
Classification. . . . .	49
New York Statute, § 220.....	733
Situs. . . . .	312
<b>Tax</b>	
Accrual of, at date of gift.....	123
Accrual of, New York Statute, § 222.....	740

**Tax** — *Continued.*

PAGE

Accrual of, at death.....	7
Application of proceeds.....	528
Affected by will.....	84
Accrual of, at date of gift.....	123
Accrual of, New York Statute, § 222.....	740
Assessment of .....	471
Assessment of; form of notice.....	792
At highest possible rate.....	270
At highest rate; form.....	479
At maximum rate.....	250
Composition of; form.....	804
Not a direct tax.....	20
Composition of New York Statute, § 233.....	756
Computations of .....	283
Decree assessing .....	481
Federal. . . . .	569
From what fund payable where life estate.....	255
General taxes a deduction.....	385
Lien of .....	244
Marshaling assets to reduce.....	398
Other inheritance taxes.....	383
Payment of .....	481
Postponed as to remainders.....	267
Proceedings to collect delinquent.....	524
Rates under New York Statute, § 221a.....	738
United States statute.....	567
Refund compelled by mandamus.....	521
Refund, New York Statute, § 225.....	743
Sale of property.....	247
Set forth in inventory.....	424
Suspended where power to invade principal.....	258
Suspended as to remainders.....	267
What property .....	306
When refund refused.....	520
Where suspended .....	457

**Taxable transfers**

New York Statute, § 220.....	733
------------------------------	-----

**Taxpayer**

Strict construction in favor of.....	53
--------------------------------------	----

**Temporary administration**

Commissions. . . . .	428
----------------------	-----

**Tenancies**

PAGE

Entirety. . . . .	190
Curtesy. . . . .	189
Joint. . . . .	197

**Tennessee**

Address of tax collector. . . . .	773
Interest, discount, penalty. . . . .	537
Mortality tables . . . . .	286
Rates and exemptions. . . . .	1033
Statute. . . . .	1033
Theory of the tax. . . . .	15

**Testator**

What he can do. . . . .	86
What he cannot do. . . . .	85

**Texas**

Address of tax collector. . . . .	773
Interest, discount, penalty. . . . .	537
Mortality tables . . . . .	286
Rates and exemptions. . . . .	1037
Statute. . . . .	1037
Theory of tax. . . . .	1

**Time**

Law at date of proceedings. . . . .	34
Law in force at death as to remainders. . . . .	266
Signing statute . . . . .	29
Transfers. . . . .	28

**Tombstone**

Cost of, deducted. . . . .	379
Inventory of cost. . . . .	427

**Transfers**

By will . . . . .	84
By intestacy . . . . .	100
Taxes place at death. . . . .	28
Exceptions to this rule. . . . .	38
Classification of . . . . .	52

**Treasury Department, United States**

Regulations. . . . .	579
----------------------	-----

<b>Treaties. . . . .</b>	<b>78</b>
--------------------------	-----------

<b>Trust</b>	PAGE
Bank deposits .....	111
Impressed upon legacy.....	249
<b>Trust companies</b>	
Duties of New York Statute, § 227.....	745
Notice by; form for.....	809
<b>Trust deeds</b> .....	125
Reserving life estate.....	35
<b>Trustees</b>	
Commissions.....	388
Personal liability of.....	525
<b>U.</b>	
<b>Unavoidable delay</b> .....	518
<b>Uniformity</b>	
Rules modified .....	21
<b>Uncle</b> .....	103
<b>Unconstitutional</b>	
As property tax.....	17
Statutes so held.....	60
Statute void .....	73
Unless act provides for notice.....	64
<b>Undertaker's bill</b>	
Inventory of .....	427
<b>United States statute</b> (see <i>Special Index</i> , p. 1071).	
<b>Utah</b>	
Address of tax collector.....	773
Interest, discount, penalty.....	537
Mortality tables .....	286
Rates and exemptions.....	1039
Statute. ....	1039
Theory of the tax.....	15
<b>V.</b>	
<b>Vacating decree</b> .....	508
<b>Value</b>	
Active securities .....	343
As of date of death.....	334
Bonds. . . . .	352

**Value — Continued.**

	PAGE
Closely held stock.....	346
Full and undiminished by life estate.....	281
Furniture.....	340
Good will .....	358
Inactive securities .....	345
Jewelry.....	341
Number of years' purchase taken.....	343
Notes.....	360
Partnerships.....	354
Pledged securities .....	352
Pictures.....	340
Rules for computing good will.....	359
Real estate .....	337
Speculative profits .....	368
Stocks.....	343
Tangibles.....	340
Theoretical in life estates.....	263
Under Federal act.....	592
Value of services.....	359
Where cannot be ascertained.....	334
Where there are no profits.....	369

**Vermont**

Address of tax collector.....	773
Amendment of 1919.....	1044
Interest, discount, penalty.....	537
Mortality tables .....	286
Rates and exemptions prior to 1917.....	1042
Rates and exemptions, 1917.....	1041
Statute of 1912.....	1042
Statute of 1917.....	1042
Theory of the tax.....	15
Reciprocal provision in act.....	81

Vessel.....	312
-------------	-----

Vested remainder .....	266
------------------------	-----

**Vested right**

Of individual .....	35
Of State .....	29
When become vested.....	57

**Veteran acts**

Not applicable to appraisers.....	441
-----------------------------------	-----

<b>Virginia</b>	<b>PAGE</b>
Address of tax collector.....	773
Interest, discount, penalty.....	537
Mortality tables .....	286
Rates and exemptions.....	1044
Statute. . . . .	1045
Theory of the tax.....	15
<b>Void statutes</b>	
Sustained in part.....	60
<b>W.</b>	
<b>War tax</b>	
United States .....	579
<b>Washington</b>	
Address of tax collector.....	773
Interest, discount, penalty.....	537
Mortality tables .....	286
Rates and exemptions.....	1050
Statute. . . . .	1050
Theory of the tax.....	16
<b>Wearing apparel</b>	
Inventory of .....	426
<b>Wurtemberg</b>	
Treaty with .....	81
<b>West Virginia</b>	
Address of tax collector.....	773
Interest, discount, penalty.....	537
Mortality tables .....	286
Rates and exemptions.....	1053
Statute. . . . .	1054
<b>Widow</b>	
Domicile of .....	218
Of adopted son.....	230
<b>Widow's award</b> .....	188
<b>Wife</b>	
Dower. . . . .	186
Entirety. . . . .	190
<b>Will</b>	
Agreement to make.....	87
Cannot dispense with inventory.....	416



**Will — Continued.**

	PAGE
Construction of .....	180, 443
Directing mortgage paid out of personalty.....	375
Misconstrued by appraiser.....	510
Mutual wills .....	92
Payment of debt by.....	97, 377
Transfers by .....	84
Transfers by, New York Statute, § 225.....	743
When burial expenses are provided for.....	380
Where agreement is performed.....	89
Where agreement is violated.....	87
Statutes concerning .....	99

**Wisconsin**

Act, as amended to date.....	1058
Amendment of 1919.....	1061
Address of tax commission.....	773
Adequate consideration .....	153
Adopted statutes .....	65
Contemplation of death.....	117
Decisions, review of recent authorities.....	1061
Exemptions. . . . .	1056
Federal tax not a deduction.....	384
Foreign executors .....	1059

**Forms —**

Consent to the transfer of securities.....	1062
Petition by nonresident executor.....	1062
Blank showing information required.....	1064
Order fixing tax.....	1065
Gifts. . . . .	111
Life estates .....	264
Interest, discount, penalty.....	537
Power to invade principal by life tenant.....	260
Probate duties .....	67
Rates. . . . .	1056
Residence of beneficiaries.....	224
Revocation of gift.....	111
Tax Commission, statement by.....	1061
Theory of the tax.....	16
Trust deeds .....	128

**Witness**

Affidavit of executor.....	453
Appraisal in another proceeding not competent.....	453
Beneficiary competent .....	431
Financial expert's report.....	453

<b>Witness — <i>Continued.</i></b>	<b>PAGE</b>
Interested witness .....	452
May be punished for contempt.....	453
Must answer questions before appraiser.....	451
Nonresident executor as.....	453
Opinion evidence as to value.....	452
Personal transactions with deceased.....	453
Qualifications of expert.....	390
 <b>Wyoming</b>	
Address of tax collector.....	773
Interest, discount, penalty.....	537
Rates and exemptions.....	1067
Statute.....	1067
 <b>Y.</b>	
<b>Yacht.....</b>	<b>312</b>
<b>Years' purchase — good will.....</b>	<b>360</b>

[Total number of pages, 1205.]







